

VOLUME 16

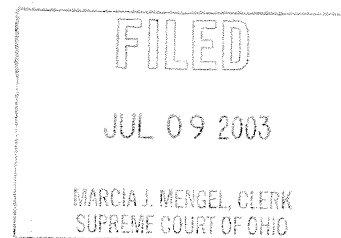
IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NO. 01-CR-794

STATE OF OHIO)	<u>MITIGATION HEARING</u>
)	
Plaintiff)	<u>VERDICT</u>
)	
-vs-)	<u>MOTIONS</u>
)	
NATHANIEL JACKSON)	<u>SENTENCING</u>
)	
Defendant)	

BE IT REMEMBERED, that on Thursday,
November 14, 2002, and Friday, November 15, 2002,
these proceedings came on to be heard before one
of the Judges of this Court, John M. Stuard, in
Courtroom No. 2, on High Street, Warren, Ohio,
before the case heretofore filed herein.

03-0137

Mary Ann Mills, RPR
Official Court Reporter
Trumbull County, Ohio



A P P E A R A N C E S

On Behalf of the State of Ohio:

Dennis Watkins, Prosecuting Attorney
Charles Morrow, Ass't. Prosecuting Attorney
160 High Street
Warren, Ohio 44481

On Behalf of the Defendant:

Anthony V. Consoldane, Public Defender
Thomas Wright, Public Defender
James F. Lewis, Public Defender
328 Mahoning Ave., N.W.
Warren, Ohio 44483

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Exhibit No.	Description	Admitted
1	911 Tape	Admitted over Obj
1A	911 Paper work	No Objection
2	Crime Scene Video	Objection Sustained
3	Crime Scene Diagram	Admitted over Obj
4	Photo	No Objection
5	Photo	No Objection
6	Photo	Withdrawn
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
17	Photo	No Objection
18	Photo	No Objection
19	Photo	No Objection
20	Photo	No Objection
21	Photo	No Objection
22	Photo	Withdrawn
23	Photo	Withdrawn
24	Photo	No Objection
25	Photo	No Objection
26	Photo	No Objection
27	Photo	No Objection
28	Photo	No Objection
29	Photo	Withdrawn
30	Photo	Withdrawn
31	Photo	No Objection
32	Photo	Withdrawn
33	Photo	No Objection
34	Photo	No Objection
35	Photo	Withdrawn
36	Photo	Withdrawn
37	Photo	No Objection
38	Photo	No Objection
39	Photo	Withdrawn
40	Photo	No Objection
41	Photo	Withdrawn
42	Photo	Withdrawn
43	Photo	No Objection
44	Photo	No Objection
45	Photo	Withdrawn
46	Photo	Withdrawn
47	Photo	No Objection
48	Photo	No Objection
49	Photo	No Objection
50	Photo	Withdrawn
51	Photo	No Objection
52	Photo	No Objection
53	Photo	No Objection
54	Photo	No Objection
55	Photo	No Objection
56	Photo	No Objection
57	Photo	No Objection
58	Photo	No Objection
59	Photo	No Objection
60	Photo	No Objection

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61	Photo Shirt	No Objection
62	Photo Shirt	No Objection
63	Photo - Victim	Withdrawn
64	Bullet Recovered from Brain of Victim	No Objection
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Spare Bedroom	No Objection
78	Clothing- Spare Bedroom	No Objection
79	Blood spatter - peninsula	Withdrawn
80	Blood Spatters- on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops - garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters - garage	No Objection
87	Overview garage	No Objection
88	Peninsula & Wall - blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken lag bolt -garage	No Objection
96	Eye glasses - garage	No Objection
97	Stairwell ceiling	No Objection
98	receipt dated 9-26-01	No Objection
99	Victim	Withdrawn
100	Victim -back close up	Withdrawn
101	Small key found under victim	No Objection
102	overview bedroom	No Objection
103	bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
105A	Photo	No Objection
106	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	Withdrawn
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim - Footprints w/ small dots	Withdrawn
113	Ashtray	No Objection
114	Ashtray	No Objection
115	Living Room	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

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118	Office Area	No Objection
119	Office Area	No Objection
120	Office Area	No Objection
121	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	left rear red car	No Objection
128	left view red car	No Objection
129	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 2 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 9:33 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
150	Double Lined Bag "Nate Jackson"	No Objection
151	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
153	Customer Receipt	No Objection
154	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior -Left Console	No Objection
175	Napkin w/ Blood Smear	No Objection
176	Floormat	Withdrawn
177	Trunk Open	No Objection
178	Keys in Ignition	No Objection
179	Rt interior head rest	Withdrawn

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180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side - steering wheel p garage door opener	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	keys	Withdrawn
189	Cell Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	Objection Sustained
193	Wagon Wheel Photo	Objection Sustained
194	Wagon Wheel Photo	Admitted over Obj
195	Wagon Wheel Photo	Admitted over Obj
196	Wagon Wheel Photo	Objection Sustained
197	Photograph Items Recovered Days Inn	Admitted over Obj
198	No Exhibit	
199	Days Innn Photographs	Withdrawn
200	Days Innn Photographs	Withdrawn
201	Days Innn Photographs	Admitted over Obj
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	Withdrawn
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	Withdrawn
206	Days Innn Photographs	Withdrawn
207	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
208	Days Innn Photographs	Withdrawn
210	Days Innn Photographs	Withdrawn
211	Days Innn Photographs	Withdrawn
212	Days Innn Photographs	Withdrawn
213	Days Innn Photographs	Withdrawn
214	Days Innn Photographs	Withdrawn
215	Days Innn Photographs	Withdrawn
216	Days Innn Photographs	Withdrawn
217	Days Innn Photographs	Withdrawn
218	Days Innn Photographs	Withdrawn
219	Days Innn Photographs	Withdrawn
220	Days Innn Photographs	Withdrawn
221	Days Innn Photographs	Withdrawn
222	Days Innn Photographs	Withdrawn
223	Days Innn Photographs	Withdrawn
224	Days Innn Photographs	Admitted over Obj
225	Days Innn Photographs	Withdrawn
226	Days Innn Photographs	Admitted over Obj
227	Photographs of Wirt Street	Admitted over Obj
228	Photographs of Wirt Street	Out
229	Photographs of Wirt Street	Out
230	Photographs of Wirt Street	Admitted over Obj
231	Photographs of Wirt Street	Admitted over Obj
232	Photographs of Wirt Street	Out
233	Wirt Street Photographs	Out
234	Wirt Street Photographs	Admitted over Obj
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and Hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knee	No Objection
241	View of Hands & Wound	No Objection

271D	Letters From Donna to Nate	
271D1		12/03/01 Admitted
271D2		11/29/01 Admitted
271D3		11/29/01 Admitted
271D4		11/28/01 Admitted
271D5		11/28/01 Admitted
271D6		11/27/01 Admitted
271D7		11/27/01 Admitted
271D8		11/26/01 Admitted
271D9		11/26/01 Admitted
271D10		11/24/01 Admitted
271D11		11/23/01 Admitted
271D12		11/23/01 Admitted
271D13		11/22/01 Admitted
271D14		11/22/01 Admitted
271D15		11/22/01 Admitted
271D16		11/22/01 Admitted
271D17		11/21/01 Admitted
271D18		11/21/01 Admitted
271D19		11/20/01 Admitted
271D20		11/20/01 Admitted
271D21		11/20/01 Admitted
271D22		11/20/01 Admitted
271D23		11/19/01 Admitted
271D24		11/19/01 Admitted
271D25		11/19/01 Admitted
271D26	Empty	Admitted
271D27		11/16/01 Admitted
271D28		11/16/01 Admitted
271D29		11/15/01 Admitted
271D30	Empty	Admitted
271D31		11/12/01 Admitted
271D32		11/10/01 Admitted
271D33		11/10/01 Admitted
271D34		11/10/01 Admitted
271D35		11/10/01 Admitted
271D36		11/09/01 Admitted
271D37		11/09/01 Admitted
271D38		11/09/01 Admitted
271D39		11/09/01 Admitted
271D40		11/08/01 Admitted
271D41		11/08/01 Admitted
271D42		11/08/01 Admitted
271D43		11/07/01 Admitted
271D44		11/07/01 Admitted
271D45		11/07/01 Admitted
271D46		11/07/01 Admitted
271D47	Empty	Admitted
271D48		11/06/01 Admitted
271D49		11/06/01 Admitted
271D50	Empty	Admitted
271D51		11/05/01 Admitted
271D52		11/05/01 Admitted
271D53		11/03/01 Admitted
271D54		11/03/01 Admitted
271D55		11/02/01 Admitted
271D56		11/02/01 Admitted
271D57		11/02/01 Admitted
271D58		11/01/01 Admitted
271D59		11/01/01 Admitted
271D60	Halloween card	Admitted
271D61		10/31/01 Admitted

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271D62		10/30/01	Admitted
271D63		10/29/01	Admitted
271D64		10/29/01	Admitted
271D65		10/28/01	Admitted
271D66		10/27/01	Admitted
271D67		10/26/01	Admitted
271D68		10/26/01	Admitted
271D69		10/26/01	Admitted
271D70		10/25/01	Admitted
271D71		10/25/01	Admitted
271D72		10/24/01	Admitted
271D73		10/24/01	Admitted
271D74		10/23/01	Admitted
271D75		10/23/01	Admitted
271D76		10/23/01	Admitted
271D77		10/23/01	Admitted
271D78		10/22/01	Admitted
271D79	Empty		Admitted
271D80		10/21/01	Admitted
271D81		10/20/01	Admitted
271D82		10/20/01	Admitted
271D83		10/20/01	Admitted
271D84		10/20/01	Admitted
271D85		10/19/01	Admitted
271D86		10/19/01	Admitted
271D87		10/19/01	Admitted
271D88		10/19/01	Admitted
271D89		10/18/01	Admitted
271D90	Empty		Admitted
271D91		10/18/01	Admitted
271D92		10/17/01	Admitted
271D93		10/16/01	Admitted
271D94		10/16/01	Admitted
271D95		10/15/01	Admitted
271D96		10/15/01	Admitted
271D97		10/15/01	Admitted
271D98		10/13/01	Admitted
271D99		10/13/01	Admitted
271D100		10/13/01	Admitted
271D101		10/12/01	Admitted
271D102		10/12/01	Admitted
271D103		10/12/01	Admitted
271D104	Empty		Admitted
271D105		10/12/01	Admitted
271D106		10/12/01	Admitted
271D107		10/11/01	Admitted
271D108		10/11/01	Admitted
271D109		10/11/01	Admitted
271D110		10/10/01	Admitted
271D111		10/10/01	Admitted
271D112		10/10/01	Admitted
271D113		10/08/01	Admitted
271D114		10/08/01	Admitted
271D115		10/06/01	Admitted
271D116		10/06/01	Admitted
271D117		10/06/01	Admitted
271D118		10/05/01	Admitted
271D119		10/05/01	Admitted
271D120		10/05/01	Admitted
271D121		10/05/01	Admitted
271D122		10/05/01	Admitted
271D123		10/05/01	Admitted

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273N Letters from Nate to Donna
 273N1
 273N2

271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

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273N62	09/27/01	Admitted
273N63	09/27/01	Admitted
273N64		
273N65		
273N66		
273N67		
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273N158		
273N159		
273N160		
273N161	09/30/01	Admitted

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273N62		09/27/01	Admitted
273N63		09/27/01	Admitted
273N64		07/12/01	Admitted
273N65		06/28/01	Admitted
273N66		06/09/01	Admitted
273N67		05/18/01	Admitted
273N68		05/15/01	Admitted
273N69		05/12/01	Admitted
273N70		05/10/01	Admitted
273N71		05/09/01	Admitted
273N72		05/06/01	Admitted
273N73		05/04/01	Admitted
273N74		05/03/01	Admitted
273N75		04/28/01	Admitted
273N76		02/24/01	Admitted
273N77		04/23/01	Admitted
273N78		04/22/01	Admitted
273N79		04/19/01	Admitted
273N80		04/16/01	Admitted
273N81		04/16/01	Admitted
273N82		04/15/01	Admitted
273N83		04/11/02	Admitted
273N84		04/10/01	Admitted
273N85		04/10/01	Admitted
273N86		04/09/01	Admitted
273N87		04/08/01	Admitted
273N88		04/04/01	Admitted
273N89		04/02/01	Admitted
273N90	Unknown		Admitted
273N91		03/31/01	Admitted
273N92		03/29/01	Admitted
273N93		03/26/01	Admitted
273N94		03/25/01	Admitted
273N95		03/23/01	Admitted
273N96		03/22/01	Admitted
273N97		03/20/01	Admitted
273N98		03/20/01	Admitted
273N99		03/20/01	Admitted
273N100		03/19/01	Admitted
273N101		03/19/01	Admitted
273N102		03/19/01	Admitted
273N103		03/19/01	Admitted
273N104		03/15/01	Admitted
273N105		03/13/01	Admitted
273N106		03/12/01	Admitted
273N107		03/11/01	Admitted
273N108		03/09/01	Admitted
273N109		03/06/01	Admitted
273N110		03/04/01	Admitted
273N111		03/03/01	Admitted
273N112		03/02/01	Admitted
273N113		02/27/01	Admitted
273N114		02/25/01	Admitted
273N115		02/20/01	Admitted
273N116		02/23/01	Admitted
273N117		02/22/01	Admitted
273N118		02/19/01	Admitted
273N119		02/16/01	Admitted
273N120		02/15/01	Admitted
273N121	Unknown		Admitted
273N122		02/13/01	Admitted
273N123		02/12/01	Admitted

NATHANIEL JACKSON v. WARDEN
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242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Envelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Cotton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hole	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Fingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	
275A	Hand Writing Analysis	Admitted over Obj
275B	Hand Writing Analysis	Admitted over Obj
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276b1	CCA Records	No Objection
276B2	CCA Records	No Objection
276B3	CCA Records	No Objection
276B4	CCA Records	No Objection
276B5	CCA Records	No Objection
276B6	CCA Records	No Objection
276B7	CCA Records	No Objection
276C	Hand Writing Standard	No Objection
276C1	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755- Two (2) pages	No Objection
278	01-35755-A	No Objection
279	01-35755-B	No Objection
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B		Not Introduced
282C	01-35755 - Mike Roberts Supplemental	No Objection
283	01-35755 - Cindy Maylee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection
285	Steve Green (1) Page	Admitted over Obj

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286A	Brenda Gerardi (3) Pages	No Objection
286B		Not Introduced
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Plastic Bag With Three (3) Boxes of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	Withdrawn
287B	Box Containing Blood Swab - Days Inn	Withdrawn
287C	Box Containing Blood Stain - Days Inn	Withdrawn
288	Wash Cloth - Days Inn - Days Inn	Withdrawn
289	Hand Towel - Days Inn	Withdrawn
290	Tape Lifts - Hairs Toilet	Withdrawn
291	Finger Print Cards - Jennifer Robinson	Withdrawn
292	White Stain Napkins from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Napkins	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Envelope #29	No Objection
310	Empty Days Inn Room Key Card Envelope #138 w/ To	Withdrawn
311	Envelope Containing Receipts	Admitted over Obj
311A	Check Inn	Admitted over Obj
311B	Credit Card Receipt	Admitted over Obj
311C	Register Audit	Admitted over Obj
311D	Phone Log	Admitted over Obj
311E	Credit Card Receipt	Admitted over Obj
312	Check Inn	No Objection
313	Photographic Line -Up Jose Flores	No Objection
314	Envelope Containing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photographic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	Admitted over Obj
320	Envelope Containing 9 Photos	Admitted over Obj
320A	4 X 5 Black and White Photo	Objection Sustained
320B	4 X 5 Black and White Photo	Objection Sustained
320C	4 X 5 Color Photo	Objection Sustained
320D	4 X 5 Color Photo	Admitted over Obj
320E	8 1/2 X 11 Photo	Withdrawn
320F	8 1/2 X 11 Photo	Withdrawn
320G	8 1/2 X 11 Photo	Withdrawn
320H	8 1/2 X 11 Photo	Withdrawn
320I	8 1/2 X 11 Photo	Admitted over Obj
321	Dobson Communication Phone Records 17 pages	Admitted over Obj
322	\$250,000 - ZurichLife Insurance Policy 24 pages	Admitted over Obj

lifting Lift Sheets	323	\$300,000 State Farm Insurance Policy 17 pages	Admitted over Obj
	324	Constitutional Rights Waiver	No Objection
	325	Video Tape Confession	No Objection
	326	Transcript of Video Tape Confession 38 Pages	No Objection
	327A	Certification - ATF - 1page	Admitted over Obj
	327B	Taurus IL46854 - 2 pages	Admitted over Obj
	327C	Taurus JH14188 - 1 page	Admitted over Obj
	360	Cd containing 19 Telephone Conversations	No Objection
	361	Telephone Log Record 3 pages	No Objection
	362	Audio Tape of 10-05-01 Recording	No Objection
	362A	Transcript of 10-05-01 Recording	No Objection
	363	Audio Tape of 10-25-01 Recording	No Objection
	363A	Transcript of 10-25-01 Recording	No Objection
	364	Audio Tape of 10-27-01 Recording	No Objection
	364A	Transcript of 10-27-01 Recording	No Objection
	365	Audio Tape of 11-03-01 Recording	No Objection
	365A	Transcript of 11-03-01 Recording	No Objection
	366	Audio Tape of 11-08-01 Recording	No Objection
	366A	Transcript of 11-08-01 Recording	No Objection
	367	Audio Tape of 11-10-01 Recording	No Objection
	367A	Transcript of 11-10-01 Recording	No Objection
	368	Audio Tape of 11-11-01 Recording	No Objection
	368A	Transcript of 11-11-01 Recording	No Objection
	369	Audio Tape of 11-15-01 Recording	No Objection
	369A	Transcript of 11-15-01 Recording	No Objection
	370	Audio Tape of 11-17-01 Recording	No Objection
	370A	Transcript of 11-17-01 Recording	No Objection
	371	Audio Tape of 11-22-01 Recording	No Objection
	371A	Transcript of 11-22-01 Recording	No Objection
	372	Audio Tape of 11-24-01Recording	No Objection
	372A	Transcript of 11-24-01 Recording	No Objection
	373	Audio Tape of 11-24-01Recording	No Objection
	373A	Transcript of 11-24-01 Recording	No Objection
	374	Audio Tape of 11-25-01 Recording	No Objection
	374A	Transcript of 11-25-01 Recording	No Objection
	375	Audio Tape of 11-29-01Recording	No Objection
	375A	Transcript of 11-29-01 Recording	No Objection
	376	Audio Tape of 12-01-01Recording	No Objection
	376A	Transcript of 12-01-01 Recording	No Objection
	377	Audio Tape of 12-02-01Recording	No Objection
	377A	Transcript of 12-02-01 Recording	No Objection
	379	Audio Tape of 12-06-01Recording	No Objection
	379A	Transcript of 12-06-01 Recording	No Objection
	380	Audio Tape of 12-08-01Recording	No Objection
	380A	Transcript of 12-08-01 Recording	No Objection
	381	Audio Tape of 12-08-01Recording	No Objection
	381A	Transcript of 12-08-01 Recording	No Objection
	349	Photographic Line-Up - Frank Reynolds	Not Intorduced
	350	Consent to Search - Wirt Street - Shelia Fields	No Objection
	351	(2) two cotton tipped swabs	No Objection
	352	Search Warrant for Oral Swabs and Photographs	Withdrawn
	385	Swabs	No Objection
	386	Swabs	No Objection
	387	Swabs	No Objection
	388	Swabs	No Objection
	389	Swabs	No Objection
	390	Gerardi - Cutting	No Objection
	391	Enevelope Containing Jackson Prints	No Objection
	391A	Jackson Prints	No Objection
	392	Photograph - Lifts	No Objection
	393	Photograph - Lifts	No Objection
	394	Enevelope Containing 2 Photos	No Objection

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395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	Admitted over Obj
397	Audio Tape of Excerpts	Objection Sustained
397A	Transcript of Audio Tape Excerpts	Objection Sustained
398	Preston Automobile Service Records Red Chrysler	Admitted over Obj
398 A-P	Preston Automobile Service Records Red Chrysler	Admitted over Obj
399	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
399 A-J	Preston Automobile Service Records Silver Chrysler	Admitted over Obj
400	Trumbull County Recorder 494 Olive Street	Admitted over Obj
400 A-C	Trumbull County Recorder 494 Olive Street	Admitted over Obj
401	Trumbull County Recorder Washington Street	Admitted over Obj
401 A-D	Trumbull County Recorder Washington Street	Admitted over Obj
402	Trumbull County Recorder - Fonderlac	Admitted over Obj
402 A-F	Trumbull County Recorder - Fonderlac	Admitted over Obj
403A-403RR	Defendant's school records	No Objection
Defendant's Exhibits		
Deft A	Deft.'s Criminal History	No Objection
Deft B	Contains 9 subparts of Blood Swabs	No Objection
Deft F	Credit Application	No Objection
Deft G	BMV Registration Card	No Objection
Deft H	Sales Agreement	No Objection
Deft I	Lease Agreement	No Objection
Deft J	Car Registration	No Objection
Deft K	Credit Application	No Objection
Deft L	BMV Registration Card	No Objection
Deft M	Real Estate Records	No Objection
Deft N	Real Estate Records	No Objection
Deft O	Real Estate Records	No Objection
Deft P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1		Orientation Instructions
Court Exhibit 2		Exhibit List
Court Exhibit 3		Brief In Opposition to Acquittal
Court Exhibit 4		Jury Charge
Court Exhibit 5		Corrected Instruction
Court Exhibit 6		Jury Question
Court Exhibit 7		Penalty Instruction

1 Thursday, November 14, 2002; Mitigation Hearing;

2 In Open Court at 1:00 p.m.:

3 THE COURT: We have several matters
4 for the record before we call the Jury up. It is
5 come to my attention that Mr. Lewis, co-counsel on
6 the defense team, has had a little stay in the
7 hospital, nothing serious. He's back home now, but
8 because he's medicated, does not feel it would be
9 appropriate to appear on the defense team today.

10 Mr. Consoldane, I have asked you, with the
11 Prosecutor, whether or not you had any motion or
12 wish to have this matter continued until Mr. Lewis
13 is available, and what is your reply to that?

14 MR. CONSOLDANE: I have talked with
15 Mr. Jackson and we do not think that any delay at
16 this point would be wise. I have also talked with
17 Tom Wright, who has a contract to work with our
18 office. Mr. Wright has gone through the three day
19 death penalty seminar. He also meets the other
20 requirements. He, however, is not certified. He
21 has not applied for the certification and would ask
22 the Court to permit him to sit as co-counsel in

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1 this case with me, so we can get this finished.

2 THE COURT: May I speak to your
3 client?

4 MR. CONSOLDANE: Yes.

5 THE COURT: Mr. Jackson, are you in
6 agreement with proceeding without Mr. Lewis being
7 here and having Mr. Wright and Mr. Consoldane?

8 THE DEFENDANT: Yes, Sir, Your
9 Honor.

10 THE COURT: I understand that I
11 would consider a continuance until probably Monday,
12 if you wished.

13 THE DEFENDANT: Yes, Sir.

14 THE COURT: You have talked with
15 your attorney and have agreed with him that it is
16 in your best interest to go forward today?

17 THE DEFENDANT: Yes, Sir, Your
18 Honor.

19 THE COURT: Fine. In regard to Mr.
20 Wright, the Court is aware that he practices in our
21 county and practices before this Court on a regular
22 basis. And I have no problem with allowing him for

1 the purposes of this particular part of the
2 proceeding to proceed. I think that even if Mr.
3 Lewis is not available and Mr. Consoldane and his
4 client wishes to proceed with just the one lawyer,
5 that I would find no problem with that, but two
6 heads are better than one. The request of
7 Mr. Consoldane to have Mr. Wright seated at counsel
8 table to assist in any way possible, is approved.
9 The State have any objection to that?
10 MR. WATKINS: No. The State would
11 make it clear that we would not object to a
12 continuance if the Defendant and his counsel, and I
13 recognize that Attorney Consoldane is first chair
14 in this case, and I respect their desire, but I
15 want the record to reflect that the State also
16 would concur with the continuance if the Defendant
17 desired to have that in order that Mr. Lewis
18 participate in the second chair.
19 MR. CONSOLDANE: Dennis, do you
20 object to Mr. Wright sitting as co-counsel, even
21 though he doesn't have the actual certification at
22 this point?

1 MR. WATKINS: I have no objection
2 with Mr. Wright. I think he could fill in and as I
3 understand it, the Defendant is waiving any right
4 that he would have under the statute to have
5 someone certified, is that right, Tony?

6 MR. CONSOLDANE: That is right.

7 THE COURT: Very good. Now was
8 there another issue?

9 MR. CONSOLDANE: Yes. Dr. McPherson
10 is our expert, which we were allowed to hire
11 through permission of the Court and she has written
12 a summary and a background about Mr. Jackson, but I
13 think it is also important that she be able to talk
14 to the Jury about his family members and she's
15 going to, but I think it would be better able to
16 help me in Court, when I am interviewing the family
17 members, if she's here with me. She knows far more
18 about the background of the family than I do, and
19 it was -- I got a little shorthanded with Mr. Lewis
20 going into the hospital and I just got ahold of Mr.
21 Wright this morning, and there's nothing that she's
22 going to testify to any differently. She's already

1 filed her report and given a copy to the
2 Prosecutor, and I'll have a copy for the Court.
3 And I just believe that her aid in this matter
4 would help me a lot.

5 THE COURT: The State?

6 MR. WATKINS: We object to the
7 presence of an expert witness in the Courtroom.
8 Obviously, these witnesses that testify, I may have
9 questions of the expert and if the expert were
10 here, it would defeat the purpose of separation of
11 witnesses. At no time in my memory, has any expert
12 witness been at trial table in this kind of
13 scenario, and therefore, we strongly object. I
14 would further note that if Attorney Consoldane
15 feels he's not prepared because of the short
16 notice, that this case should be continued until
17 he's prepared and able to go forward without the
18 witness being in the courtroom, because to me that
19 is not good reason to have a witness in the
20 courtroom, when there's a separation of witness
21 order.

22 MR. CONSOLDANE: We had the

1 separation of witnesses and you allowed the State
2 to have Paul Monroe sit at counsel table through
3 the entire trial. He was a witness in the same
4 manner, and if it is fair for them, I don't see why
5 it should not be fair for the defense.

6 THE COURT: The reason that is
7 permitted is because the State of Ohio is here as a
8 non-entity as far as a physical body and the
9 tradition has always been that the State of Ohio
10 has the right to have a person represent them and
11 that is the reason the officer is always allowed,
12 in my experience. I have never seen that varied.

13 MR. CONSOLDANE: He's still a
14 witness.

15 THE COURT: This is kind of an
16 interesting situation here. It is true that we
17 have had for purposes of this trial, a motion to
18 exclude witnesses. The purpose we all know is that
19 one person can't correlate their testimony with
20 that of other people, if they are allowed an
21 opportunity to sit here and listen to other people,
22 that may vary their testimony in some way. In this

1 particular case, we have a Defendant who is here
2 trying to keep this Jury from taking his life. The
3 State raises the objection on a ground that may be
4 valid. I am sitting here and trying to think of a
5 situation, but the psychologist has to take into
6 account all matters in giving her opinion. It is
7 nothing but her opinion, subject to cross
8 examination. I think in looking at the entire
9 situation it may, Mr. Watkins, vary past practice,
10 I don't know. I don't remember on any other cases
11 that I have had, what had happened on that.

12 MR. WATKINS: I'm not aware of any
13 case. That would open a Pandora's box.

14 THE COURT: I can see during the
15 main phase of the trial. You do not have an expert
16 on this phase of the hearing. No real call to
17 raise further evidentiary matters because that was
18 done during the first phase. Approach the bench
19 here for a minute.

20 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
21 OF HEARING)

22 THE COURT: I have had side bar

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1 conferences. I have asked counsel if they have any
2 case law on this point. Counsel for the defense
3 has brought forth Evidence Rule 703. State your
4 position on the record.

5 MR. WRIGHT: Judge, this goes to the
6 issue of whether Dr. McPherson should be permitted
7 in the courtroom during the testimony of the other
8 witnesses who will testify. It is the State's
9 position that she should not be able to. It is our
10 request that she be permitted to. Evidence Rule
11 703 essentially states, what an expert is allowed
12 to consider in rendering an opinion. That would
13 include facts or data, upon which the expert bases
14 an opinion or inference may be those perceived by
15 him or her or admitted in evidence at the hearing.

16 Our point is this. Dr. McPherson is an
17 expert who knows a heck of a lot more about this
18 stuff than we do. As an expert, she will be able
19 to recognize factual matters that are presented in
20 the courtroom better than we would, as to what
21 would form her basis and her opinion. She's
22 allowed to offer an opinion based upon evidence

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1 presented in the courtroom, and she's the one in
2 the best position to recognize which aspects of the
3 factual testimony presented by the other witnesses
4 would be relevant.

5 In light of that, we would ask that she
6 be permitted in the courtroom during the testimony
7 of the other witnesses so that she can properly
8 form a basis as permitted pursuant to Evidence Rule
9 703.

10 THE COURT: Mr. Watkins?

11 MR. WATKINS: I don't think that is
12 an appropriate interpretation of the evidence rule.
13 I would note that the Defendant in this case is
14 represented by counsel, who has used this witness
15 on at least three occasions that I can recall. And
16 on two of those occasions, he's been successful in
17 not having the death penalty recommended by the
18 Jury. So, the tradition here, and in all
19 Courtrooms of this County and to my knowledge, all
20 Courtrooms in Ohio, an expert witness is not to be
21 at the trial table with either side. And precedent
22 here, clearly establishes that this has not been

1 done.

2 I would also respond in this way. One,
3 that if she would be permitted to sit at the trial
4 table it gives to the Jury, the impression that
5 she's somehow a much more significant expert in
6 this case than for example the pathologist that the
7 State would present or any expert that we had
8 presented, such as the BCI experts, that this is
9 outside the realm of what is procedurally correct
10 in any case. Moreover, if defense counsel believes
11 that this witness should know the evidence, there's
12 no reason why she could not have talked to the
13 witnesses that are coming. I am assuming she may
14 have and there's no reason to give extra time, if
15 the Court felt so disposed, that the witness could
16 talk to these witnesses, who are defense witnesses,
17 prior to coming in, and that would also be
18 something they could do, and normally would be
19 done, because I believe she does talk to a lot of
20 the witnesses as part of her repertoire in
21 testifying as a defense witness.

22 So, to clear the idea that she should be

1 here is not idea that is supported in any cases
2 that they have presented, and the tradition
3 certainly is not there, and I think policy reasons,
4 it magnifies her support and that should not be
5 done, and therefore, the State feels it should not
6 be permitted.

7 MR. CONSOLDANE: Is that why you
8 have Paul Monroe sit there, to magnify his support?

9 MR. WATKINS: That is a separate
10 issue.

11 THE COURT: I don't think there's
12 any comparison between the State having a body
13 sitting there.

14 MR. CONSOLDANE: I want to clear one
15 thing up. Is that they are not entitled to have a
16 representative sit at the table. That is not true.
17 What they are entitled to have, they are entitled
18 to have someone there to aid with them if they have
19 a complicated case, to help them. This case is
20 over. There's no reason for him to be sitting
21 there any longer. I object to him sitting there,
22 too. If you check the case law on this, they are

1 entitled to have a representative that can aid them
2 in presenting the evidence. Not just to sit there
3 because he's a representative.

4 MR. WATKINS: I'll agree with
5 defense counsel and request Sergeant Monroe not to
6 be part of the proceedings.

7 THE COURT: Okay. Whatever. I
8 don't have anything to tip this one way or the
9 other. I think there are legitimate arguments on
10 both sides. The fact is, that perhaps what I said
11 before about this being a very serious matter,
12 which it definitely is, that should not tip the
13 thing against the State, either. That is not being
14 fair to the State. Traditionally, when a motion to
15 exclude or separate is filed, and that is handled
16 throughout the trial in that manner, I have not
17 heard any arguments that have convinced me that I
18 should vary that very common practice that has
19 always been followed, but your objections are noted
20 on the record.

21 MR. CONSOLDANE: It was my motion to
22 separate the witnesses, and it wasn't done. They

1 let Mr. Monroe in the entire trial. I'll withdraw
2 my motion to separate witnesses and if they are
3 offended about her sitting at the trial table, she
4 can sit in the audience, that would be fine.

5 THE COURT: I understand,
6 Mr. Watkins --

7 MR. WATKINS: I would move to
8 separate witnesses on the State's motion on this
9 phase.

10 THE COURT: As far as him sitting at
11 counsel table during phase one, I find that
12 appropriate, and if it isn't, then virtually every
13 case I have ever sat on has not been tried
14 properly. But that is a matter again that you can
15 raise on The Court of Appeals level to see if they
16 agree with that. For purposes of this hearing,
17 that motion to exclude will remain in effect for
18 all parties.

19 MR. WATKINS: Let the record reflect
20 that Detective Monroe will not be in the courtroom
21 during this stage of the proceeding.

22 (End of Hearing on motion)

1 Jury present at 1:20 p.m.)

2 THE COURT: Good afternoon. We're
3 now ready to proceed with the second phase of this
4 trial, which is necessary because of the finding on
5 phase one. You will be requested at the conclusion
6 of this presentation to make a recommendation on
7 sentencing to this Court. I would like to tell you
8 that that word recommendation is argued back and
9 forth between counsel as to the meaning of it.

10 Under our law, a Judge has no power to ever
11 increase a penalty, only to decrease a penalty, but
12 only if after an independent finding by the Court,
13 the Judge, there's a finding that there was not
14 sufficient evidence for the Jury, to make the
15 finding that they did. So, your recommendation is
16 a recommendation to the Court, and it is more than
17 that. It is your decision, and it would not be
18 tampered with by the Judge unless you have gone
19 awry somewhere. I would like to know at this time,
20 if any of you have now formed such a fixed opinion
21 on what sentence you should -- that should be
22 entered in this second phase, or has so closed your

1 mind that you could not hear and fairly consider
2 evidence which might be presented here that is
3 favorable to the Defendant, which might cause you
4 to conclude that the death penalty is or is not
5 appropriate? What I'm trying to say is, is each of
6 the jurors of such a mind that you can go from
7 where you are at here, with no conclusions in your
8 own mind, as to what the proper penalty will be
9 here, that you will be able to fairly listen to
10 both sides and to make your determination on that
11 evidence which is presented. I see every one
12 shaking their head. Is there anyone that has any
13 reservation in their mind about that? Okay. Fair
14 enough. Are any of you of such a frame of mind
15 that you could not fairly consider evidence that
16 the State might present in an effort to convince
17 you that the death penalty is appropriate? You get
18 the picture. Both sides are entitled to a new,
19 fair and unbiased and unprejudiced hearing on the
20 merits of what is about to be presented setting
21 aside for the moment, what led you up to the Jury
22 verdict last Friday. You are all comfortable with

1 that? Very good.

2 One other point I would like to touch on,

3 are there any of you that because of your

4 experience, and this has been a long trying

5 experience for all of you and I know that. Is

6 there anything from that, the last three weeks or

7 so, that makes you feel that you would not like to

8 continue on this, that you are not able to continue

9 it, rather than would not like to? You have all

10 embarked on a very serious undertaking here and you

11 performed that so far, exactly as we were

12 requesting you to do. Are you all comfortable with

13 going into the second phase?

14 (All nodded affirmatively.)

15 THE COURT: Very good. You are now

16 going to listen to testimony. I'll give you an

17 instruction at the appropriate time, once the

18 evidence is presented here and you have heard this

19 100 times by yourselves and then together. The

20 burden is always on the State. And the burden

21 remains on the State in this phase, and the State

22 has to prove beyond a reasonable doubt that the

1 aggravating circumstances outweigh any mitigating
2 factors that might be found in favor of the
3 Defendant. The State ready to proceed?

4 MR. WATKINS: Yes Your Honor.

5 (At Side Bar with reporter present.)

6 THE COURT: I have asked counsel to
7 approach side bar because I thought that Dennis --
8 Dennis thought I left something out. I'll explain
9 one point to them, that the burden of going forward
10 is on the Defendant, but the burden of proof is
11 still on the State. And I understand the State is
12 only going to move to introduce your evidence at
13 this time.

14 MR. WATKINS: The State is going to
15 move to introduce its evidence that was admitted in
16 the first phase. It believes it is relevant or may
17 be relevant, depending on testimony from witnesses
18 that the defense presents. My understanding is
19 that Attorney Consoldane wishes to reserve his
20 right to object to any evidence.

21 MR. CONSOLDANE: I'm going to enter
22 an objection to it now before you admit it, I'll

21

1 address each particular one that I have. I just
2 have a general blanket objection to it at this
3 point. I'll be more specific later.

4 MR. WATKINS: I have no problem with
5 that.

6 THE COURT: For the record, the
7 State is going to move to admit -- I'm not ruling
8 on the admission, the failure to object to any
9 particular item as we go through it, though, say
10 there's no objections to any piece of evidence, and
11 for the record at the conclusion of this hearing,
12 those Exhibits will be admitted because they have
13 already been admitted in phase one. That allows
14 you an opportunity to question any particular
15 exhibit again, that you may wish to question. He's
16 moving. I'm not ruling.

17 MR. CONSOLDANE: I objected.

18 MR. WATKINS: And we understand that
19 the Court, that Attorney Consoldane has the right
20 to object to any particular item we bring up at
21 this time or in the future. He's not losing that
22 right to object.

1 MR. CONSOLDANE: That is fine.

2 (End of Side Bar discussion.)

3 THE COURT: Let me explain one thing
4 that I left hanging. The State has the burden of
5 proving beyond a reasonable doubt the aggregating
6 circumstances outweigh the mitigating factors.
7 They have the burden of proof. The defense has the
8 burden of going forward.

9 One other thing, Attorney Jim Lewis has
10 had a few unpleasant days and he has been in the
11 hospital. He's out now and I understand he's doing
12 fine, but because of some medication, he did not
13 feel it would be appropriate that he would appear
14 today in this matter. And by everyone's agreement,
15 no one wanted this case continued any further, so
16 to fill in for Mr. Lewis, Mr. Thomas Wright, the
17 gentleman seated at the end of the table -- Tom,
18 please stand up. Attorney Wright has practiced for
19 some years in our town and if I may give him a
20 compliment. He's a very capable younger attorney,
21 so he has agreed to assist Mr. Consoldane in this
22 phase of the trial. The State has moved to

1 introduce the evidence that was on the record and
2 admitted under phase one. You wish to proceed?

3 MR. CONSOLDANE: I'll enter an
4 objection at this time until they can prove that
5 what individual pieces of evidence are necessary
6 for the second portion.

7 THE COURT: We have reserved that
8 right to you on the record. You may proceed.

9 RAYMOND DICKERSON

10 having been duly sworn according to law, on his oath,
11 testified as follows:

12 DIRECT EXAMINATION BY MR. CONSOLDANE:

13 MR. CONSOLDANE: Before I start, all
14 of the witnesses have requested that they not be
15 photographed.

16 THE COURT: They have been notified.

17 Q. Raymond, would you state your name for the
18 Jury?

19 A. Raymond Dickerson.

20 Q. Where do you live?

21 A. I live in Youngstown. I live at [REDACTED]
22 [REDACTED]

1 Q. Do you know Nathaniel sitting over there?

2 A. He's my stepson.

3 Q. You have known him since he's been about 15?

4 A. Since 15 years old, I have known Nathaniel.

5 Q. And the entire time that you have known him,
6 has he always been respectful to you?

7 A. Yes, Sir.

8 Q. Has he been respectful to his mother?

9 A. Yes, he has.

10 Q. And was his grandmother, how about his
11 grandmother?

12 A. Very respectful with his grandmother.

13 Q. You didn't know him much before 13, but after
14 the age of 15, did he continue to live
15 with his mother?

16 A. Yes, he has.

17 Q. And did there come a time when he moved out?

18 A. He got older, when he moved out.

19 Q. How old was he, 17 when he moved out?

20 A. About 17, somewhere like that.

21 Q. And do you know where he moved, when he moved
22 out?

1 A. No, I did not.

2 Q. After age 17, you didn't see a whole lot of
3 Nathaniel?

4 A. No, I haven't, no, I didn't.

5 MR. CONSOLDANE: Thank you. Nothing
6 further.

7 MR. WATKINS: No questions. We
8 thank the witness.

9 THE COURT: You may step down.

10 TAUSHIA KORNEAGAY

11 being duly sworn according to law on her oath,
12 testified as follows:

13 DIRECT EXAMINATION BY MR. CONSOLDANE:

14 Q. How are you today?

15 A. Fine.

16 Q. Would you introduce yourself to the Jury,
17 please?

18 A. Taushia Korneagay.

19 Q. And where do you live, Taushia?

20 A. [REDACTED]

21 Q. And how are you related to Nathaniel Jackson?

22 A. I am his sister.

1 Q. You have known him pretty much all of your

2 the street life?

3 A. Yes, I have.

4 Q. Are you older or younger?

5 A. I am the next to the youngest. There's four
6 of us.

7 Q. And how has Nathaniel treated you?

8 A. He treated me really good. He loved me just
9 like I love him. He's really kind. He
10 did a lot for me. I got four kids.

11 Q. He come over and help out with the kids?

12 A. Yes, he helped out a lot with the kids. Kept
13 them, washed them, everything. He kept
14 them, he loved them. He did a lot for
15 us.

16 Q. And did there come a time when you were still
17 living at home and Nathaniel moved out?

18 A. Yes.

19 Q. And do you know where he went out and moved
20 to?

21 A. I was young at the time, because I am only 25.
22 He stayed with my grandmother.

1 Q. Pretty much living on the street?

2 A. He ain't living on the street, because my
3 grandma took him in.

4 Q. You like to see -- would you like to see the
5 Jury save his life?

6 A. Yes, I would.

7 Q. Would you like to be able to write to your
8 child growing brother in prison?

9 A. Yes.

10 MR. CONSOLDANE: Thank you. Nothing
11 further.

12 CROSS EXAMINATION BY MR. WATKINS:

13 Q. Taushia, you remember me, we have talked a
14 couple of times?

15 A. Yes.

16 Q. You are 25 and your brother is 30 years old?

17 A. Yes.

18 Q. And have you visited him in jail?

19 A. Yes, I have.

20 Q. And when you were raised in Youngstown, you
21 had your mother and your grandmother next
22 door?

1 A. Yes.

2 Q. And would you describe Nathaniel as a very
3 smart person?

4 A. I describe him as very smart.

5 Q. Did he have talent as an artist? Could he
6 draw?

7 A. Yes. He always kept busy, yes.

8 Q. When you were a child growing up, did you ever
9 see your brother abused?

10 A. No.

11 Q. He was treated well by your mother and your
12 grandmother?

13 A. Yes, he was.

14 Q. And by his stepfather?

15 A. Yes.

16 Q. And you really didn't know his father, did
17 you?

18 A. No, not too good.

19 Q. And you work pretty hard yourself to bring up
20 your four children?

21 A. Yes, I have.

22 Q. And you haven't been in any real problem, have

1 you?

2 A. No. to law, or for each.

3 Q. And when you were a child and when he was a
4 child, were you taught right from wrong?

5 A. Yes, we have been.

6 Q. Did Nathaniel Jackson go to church?

7 A. Yes, my Mom kept us at church.

8 Q. He knew right from wrong?

9 A. He knows right from wrong.

10 Q. And your mother bring you up to be responsible
11 for what you do to others?

12 A. Yes.

13 MR. WATKINS: Thank you.

14 THE COURT: Any redirect?

15 REDIRECT EXAMINATION BY MR. CONSOLDANE:

16 Q. You still keep in contact with Nathaniel?

17 A. I still have contact with him.

18 MR. CONSOLDANE: Thank you. Nothing
19 further.

20 THE COURT: You may step down.

21 Thank you very much.

22

1 LORRAINE RUE

2 having been duly sworn according to law, on her oath,
3 testified as follows:

4 MR. WATKINS: I have no objection
5 for her to remain, the mother to remain there.

6 (Also seated on the witness chair is S [REDACTED]
7 T [REDACTED] J [REDACTED]. Both Lorraine and S [REDACTED] are
8 on the witness chair.)

9 DIRECT EXAMINATION BY MR. CONSOLDANE:

10 Q. Lorraine, S [REDACTED] is your daughter?

11 A. Yes.

12 Q. It is also Nathaniel's daughter?

13 A. Yes.

14 Q. Has Nathaniel seen his daughter before?

15 A. Yes.

16 Q. And has he brought her things?

17 A. Yes.

18 Q. And what grade is S [REDACTED] in school now?

19 A. Second grade.

20 Q. S [REDACTED], what is your favorite subject in
21 school?

22 A. (S [REDACTED]) Playing games.

1 Q. What do you like the least, what don't you

2 like about school?

3 A. (S [REDACTED]) I don't know.

4 Q. Is that your Daddy sitting over there?

5 A. (S [REDACTED]) Yes.

6 Q. Has he brought you toys?

7 A. (S [REDACTED]) Yes.

8 Q. Would you like to continue to see him?

9 A. (S [REDACTED]) Yes.

10 Q. Sorry to see him setting over there like that?

11 A. (S [REDACTED]) Yes.

12 MR. CONSOLDANE: I have nothing
13 further.

14 MR. WATKINS: I have no questions.
15 We would thank them.

16 PAULINE KORNEAGAY

17 having been duly sworn according to law on her oath,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. CONSOLDANE:

20 Q. Pauline, would you introduce yourself to the
21 Jury, please?

22 A. Pauline Korneagay, Nathaniel's mother.

1 Q. Pauline, I'm going to direct your attention

2 back to when Nathaniel was growing up.

3 When he went to school, how did he do in

4 school?

5 A. He did pretty good in school.

6 Q. Did he have any problems in school?

7 A. No, not really.

8 Q. There come a time when Nathaniel quit school?

9 A. Yes, he did.

10 Q. Where did he go to live at after that?

11 A. He was staying with me and my mother. I was

12 staying with my mother at the time.

13 Q. Was this a pretty rough neighborhood?

14 A. No. We don't stay in a rough neighborhood.

15 Q. One time you wrote a letter to the school

16 telling them to excuse Nathaniel, because

17 he had been shot?

18 A. No.

19 Q. You don't remember that?

20 A. No.

21 Q. You don't remember Nathaniel being shot?

22 A. No, I don't. Our neighborhood was not rough.

1 Q. Do you keep in touch with Nathaniel?

2 A. Yes, I do.

3 Q. You come visit him?

4 A. Yes.

5 Q. And if he was going to be sent to prison,
6 would you continue to visit him?

7 A. Yes, I would. I would love to.

8 Q. You would rather visit him in prison than
9 visit his grave?

10 A. I would visit him in prison, yes.

11 MR. CONSOLDANE: Thank you.

12 MR. WATKINS: No questions.

13 THE COURT: You may step down.

14 DR. SANDRA McPHERSON

15 having been duly sworn according to law, on her oath,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. CONSOLDANE:

18 (Defendant's Exhibit P Marked for Identification.)

19 Q. Doctor, how are you this afternoon?

20 A. Just fine.

21 Q. Would you introduce yourself to the Jury,
22 for the record please?

1 A. Dr. Sandy McPherson, last name

2 I waM c P H E R S O N. I'm a clinical and
3 forensic psychologist and I have been a
4 member of the defense team. My purpose
5 was to understand the Defendant and to
6 develop information for this mitigation
7 trial.

8 Q. In regards to that, you made up a report,
9 which I gave a copy to the Prosecutor and
10 the Judge has a copy, is that correct?

11 A. That is correct.

12 Q. And Dr. McPherson, where did you go to school?

13 A. Case Western Reserve University for my Ph.D.
14 Prior to that, Kent State University for
15 a Bachelor's degree.

16 Q. And how long have you been engaged in private
17 practice?

18 A. Since 1968.

19 Q. And prior to that, did you work anywhere else?

20 A. I worked other places, as well as being in
21 private practice. I worked as a director
22 of research for the Child Guidance

1 Center, which was a combined research and
2 clinical position. I was a consultant,
3 and am a consultant to the Veterans
4 Administration in their training program.
5 I have been a member of the University
6 Hospitals' group practice during, for a
7 period of about three years, and then
8 went back out into a solo practice. I am
9 currently also on the Fielding Institute
10 graduate training program and faculty.
11 I'm consultant to the FBI and some of the
12 police forces on victim witness
13 refreshment.

14 Q. Were you also on the Board of Examiners for
15 psychologists in Ohio?

16 A. Yes. I have served on that Board as its
17 examiner and as the president of that
18 Board. I was appointed to the first
19 Board that the State had.

20 Q. And as a forensic psychologist, you have
21 testified numerous times in Court, have
22 you not?

1 A. I have.

2 MR. CONSOLDANE: I would wish that
3 Dr. McPherson be declared an expert in this matter.

4 THE COURT: Any objection?

5 MR. WATKINS: No.

6 THE COURT: She's so qualified.

7 Q. In compiling this report, you had to, you went
8 and looked into Nathaniel Jackson's
9 background and what could you tell the
10 Jury about what you have discovered?

11 A. Well, the sources of information about his
12 background included himself and also
13 records such as school records and
14 records from other sources that had
15 contact with him. The kind of things
16 that I found out included that he's
17 obviously been born and raised in this
18 area, he grew up and was cared for by his
19 mother and by his maternal grandmother.
20 His father had little, if any real
21 involvement with him. I guess there was
22 occasional contact. We have been unable

1 to locate his father. His schooling from
2 through 2nd grade, which the time he entered showed that he had
3 fairly serious problems. He had behavior
4 problems that were obvious and noted in
5 the record from the first grade on, which
6 is fairly unusual. By the third grade,
7 he had already been suspended because of
8 his behavior difficulties. All of which
9 were classic for an ADHD configuration,
10 that was impulsivity and inability to
11 stop his behavior. Quick reactivity,
12 that sort of thing.

13 Q. Would you explain to the Jury what ADHD is?

14 A. Attention deficit, hyperactivity disorder. A
15 disorder which can be at least addressed
16 through, when it presents in severe form,
17 through a combination of medication,
18 cognitive therapies, behavior therapies,
19 that sort of thing and highly structured
20 school programming. He did not get into
21 any kind of structured program until he
22 was about in the eighth grade. I have to

1. He went to the
2. He also was in a Stambaugh program, which was the only
3. time that he recalls liking school,
4. really doing fine. When he was in that
5. program, he apparently did all right. It
6. was very structured. The situation was
7. one in which he got a lot of one on one
8. undivided attention, and he was excited from that
9. program. Did not manage to hold up and
10. was put back in that program and once
11. again did fairly well while in that
12. program. In common with most kids who
13. have this kind of difficulty, he was
14. early on into drugs. Never -- he used
15. alcohol periodically, but does not seem
16. to have developed a primary alcohol
17. dependency. He did rapidly become
18. dependent on marijuana, starting use at
19. about 13 and according to his own
20. retrospectives, he was using rather
21. quickly at a very high level, basically
22. using whatever he could get his hands

1 on -- marijuana, when he could get his
 2 in the way hands on it. He also was involved with
 3 cocaine to some degree. He never used
 4 any of the other so-called -- well, other
 5 what we might call serious drugs, like
 6 PCP or methamphetamine. One of the
 7 things we know again about ADHD is that
 8 of school as they have an underlying neurological
 9 disorder and that neurological disorder
 10 involves some depletion of substances in
 11 the brain. The potential to get drug
 12 involved is much higher for this group
 13 than for other people, because the drugs
 14 help to take the edge off. They make the person
 15 feel better. They slow down some of the
 16 hyperactivity. Some of the drugs,
 17 like cocaine, notably, will then worsen the
 18 hyperactivity condition, especially as
 19 they come down off of the cocaine, but
 20 the initial impact is one that is
 21 helpful -- helpful at least subjectively.
 22 It is not helpful from the standpoint of

1 those who work with them. He has had
2 very little in the way of work history.
3 He's 30 years old, but I think his
4 longest period of work was about six
5 months, maybe less. Perhaps less. And
6 it was a piece work or periodic work
7 situation. He was never full time. He
8 dropped out of school at the 11th grade,
9 and his involvement or his record at that
10 point included juvenile offenses. He
11 wound up once he was an adult, going off
12 and living on his own. He talked about
13 deciding he wanted to be on his own. His
14 mother kind of hoping he wouldn't leave,
15 but supporting him in being independent
16 as he saw it. Unfortunately, his idea of
17 independence was to basically survive on
18 the streets and the streets he was
19 surviving on were fairly violent ones.
20 During the ensuing ten years or so, he
21 was shot at least four or five times.
22 When he was -- well, before he left the

1 school at the 11th grade, there was a
2 note that his mother sent to the school,
3 which asked for him to be excused because
4 two people were shooting at him and he
5 had to make a police report. It gives a
6 flavor of the kind of environment within
7 which he was coping at the time or not
8 coping as the case may be. He was
9 recommended for treatment for his
10 dependency, his drug abuse and dependency
11 during school. At one point, a contract
12 approach was made with him to not use,
13 but again, obviously it did not hold up.
14 He was repeatedly involved in non-violent
15 crimes during his adulthood. Many of
16 which, probably all of which but many of
17 which were involved, were related to his
18 drug habit.
19 In order to have that kind of life
20 style, one has to operate in an
21 anti-social or illegal fashion, and
22 indeed that was true of his life. He was

1 recommended for treatment at a couple of
2 different points, but did not complete
3 it, so he's never been effectively
4 treated for either his drug abuse,
5 dependency habits or for his ADHD. He
6 has had a series of relationships. In
7 one relationship produced a little girl
8 that he maintains some involvement with.
9 Periodically would go and take something
10 to her. He was never in a position to
11 really assume responsibilities as a
12 father or a supporter. He had a second
13 child, now age four. That child was born
14 to, within the context of a relationship
15 to a person whom he refers to as his
16 fiancée or someone with whom he was very
17 close and intending to be together. The
18 child was born. He was involved in the
19 relationship at the time. There was a
20 medical emergency and the child was life
21 flighted to the University Hospitals.
22 And subsequently, after being treated for

1 the problems that the child had, which
2 included a stroke and some seizures and
3 that sort of thing, the youngster was
4 diagnosed with cerebral palsy. At this
5 point, the status of that child is
6 unknown, because the mother took -- the
7 relationship broke up, the mother took
8 the child to her mother and left, and
9 when the Defendant went to visit that
10 child, the maternal grandmother refused
11 him access and has never allowed any
12 contact. So he does not know the
13 situation of that child except that
14 there's some degree of a crippled
15 condition and limitations on mobility.
16 He lost another relationship where
17 he was intending to be married
18 apparently. At least as he saw it. The
19 individual was killed over a dispute
20 around whether or not a fair sale was
21 taking place in the context of some kind
22 of little business she was running. He

1 then continued -- essentially the life
2 My re2d or his situ style continued. He met the individual
3 who is his codefendant in this or is a
4 codefendant in this crime, and that
5 brings him up to the present day in terms
6 of his life history. Some efforts were
7 made to try to find his father. People
8 in the community give different stories about how the
9 father is functioning. Mr. Jackson
10 believes his father to have a somewhat
11 stable life style. Others have indicated
12 that he does not. I do not know the
13 actual status of that man. His mother
14 and sister, I know, have already spoken
15 here. He has two brothers. One brother
16 is a full brother, the sister and the
17 other brother are half siblings. His one
18 brother has just returned from a period
19 of incarceration and is apparently trying
20 to make a life for himself, but has not
21 been available. The other brother is
22 somewhere, but again has not been

1 accessible.

2 My read on his situation is that the
3 family has been able to function only in
4 a relatively marginal fashion and
5 certainly has not been able to intervene
6 in the patterns of behavior that have
7 been present practically since he was
8 visible in the community.

9 Q. One thing as part of this process, you and the
10 psychologist you work with, have
11 administered several tests to Nathaniel,
12 is that not correct?

13 A. That is correct.

14 Q. First of all, would you explain to the Jury
15 what the level of mental retardation
16 would be?

17 A. We generally consider a person to have mild
18 mental retardation if they are testing at
19 or below 60 on an I Q test and also if
20 there are other indications, that their
21 life adjustment is impaired and in need
22 of certain kinds of support or help. A

1 person who is functioning above that
2 level is in a borderline range and as we
3 move on upward into a low average range,
4 an average range and above.

5 Q. What I noticed is that you tested Nathaniel
6 and he had a full scale IQ of 84. Is
7 that correct?

8 A. That is correct.

9 Q. And but looking at where you cited in the
10 school records, is that he had an IQ of
11 about 70 when he was tested twice in
12 school?

13 A. Correct.

14 Q. That is kind of amazing that somebody could
15 raise their IQ so many points?

16 A. Yes, it is. It is a very unusual pattern.

17 There were two testings during school and
18 I realize the report I put down fourth
19 grade and tenth. It was actually seventh
20 and tenth grade. In both of those
21 testings he was at or around the 70
22 level. His improvement and IQ quite

frankly, I attribute it to a couple of things. First of all, his level of cooperation and attention and focus was very poor during his school years, throughout. At no time was he ever tested, for example, after being medicated for his condition, because he's never been medicated for his condition except what he might be doing to himself. When we tested him, he was in an entirely structured situation in the jail and he had spent some time in a structured situation prior to that time when he was incarcerated. His degree of attentional deficit was somewhat less and certainly his degree of cooperation was higher in that he wanted to try and produce what he could for us, since we were working on a defense for him. So, he did better. The pattern of the scores is consistent with the educational deficit and also with some underlying learning disabilities.

1 But his full scale IQ is 84. In fact,
2 that is based partly on the sub test and partly
3 on what we know about the test bias, he's
4 an African American who has not had a
5 good education, the test is biased
6 against him. The chances are he's of
7 average ability, and under the right
8 circumstances could have been quite
9 reasonably successful in life.

10 Q. And he even has a little bit of artistic
11 ability, too?

12 A. This is noted in the records and mentioned by
13 others, yes.

14 Q. Now, you mentioned that he kind of self
15 medicated himself. The proper medication
16 for him at the time, probably would have
17 been Ritalin?

18 A. Ritalin or there's psycho-stimulants is what
19 they are, but what they appear to do is
20 to intervene in the operation of the
21 systems, so that it works better. They
22 don't appear, for at least for those for

1 whom they work, and we need to know more
2 about that, but for that subsection of
3 people for whom they work, they appear to
4 allow the inhibitors to work better.

5 Clearly he was never tried, even tried on
6 any kind of medication program. There's
7 a letter in the school records from a
8 teacher, who identifies him in her eyes
9 as being emotionally ill and talks about
10 his behavior, talking to himself and
11 talking to something which is not there.
12 There are no signs that he's psychotic,
13 but I am quite sure she was seeing a lot
14 of discontrolled verbal behavior, that is
15 part of his situation.

16 Q. Matter of fact, in your summary, one of your
17 diagnoses was a major impairment. What
18 does that mean?

19 A. I am looking at the --

20 Q. That would be Axis V.

21 A. That is the -- it is an adjustment scale and
22 40, there are behavior descriptions for

1 assigning different level numbers. His
2 behavior and functioning allows me to
3 assign him a score of 40, which is
4 indicative of major impairment in several
5 areas of function. You can also get a 40
6 if you have an impairment in one specific
7 area of function, if it is psychotic,
8 lack of ability to appreciate reality.
9 That is not the case here, but what we
10 have is a number of areas where he has
11 not got the skills to succeed, most of
12 them relating to society, but also his
13 ability to deal in relationship context,
14 his ability to work in a consistent
15 fashion, to use whatever abilities he has
16 have never been in evidence.

17 Q. And then on Axis II, you indicated he has an
18 anti-social personality disorder.

19 A. That is correct.

20 Q. You added a caveat to that though?

21 A. The anti-social personality disorder is a
22 diagnosis that describes a long term

1 impairment in an individual's ability to
2 conform their behavior to social
3 expectations, to stay out of trouble, to
4 not get into legal difficulties, to
5 control their reactions and not behave
6 impulsively in destructive ways. All of
7 which describe aspects of this
8 Defendant's behavior. However, the
9 category also overlaps with a group of
10 people who are particularly serious, we
11 call them psychopaths or sociopaths and
12 they have no ability or very little
13 ability to identify with the needs of
14 others, to exhibit loyalty, to have any
15 real kind of connectness to others and
16 they often commit extraordinarily heinous
17 crimes when they are seen in the context
18 such as this. This gentleman certainly
19 meets the requirements for an anti-social
20 personality disorder. He does not meet
21 the requirements for that other category
22 and he has shown the capacity to be loyal

1 within his own group. In his discussion
2 of his own life, one of the
3 disappointments he detailed was finding
4 out that a friend betrayed him. He
5 expected, since he had a friendship, that
6 that wouldn't happen, so he has the sense
7 of what a friend is supposed to do, and
8 he was surprised when that doesn't take
9 place. He himself was loyal to the
10 codefendant, rather than simply trying to
11 get out of it and blame everything on
12 her. People who would do the latter are
13 more in that category of sociopathic
14 behavior. So he's clearly a person whose
15 behavior has been formed in an
16 anti-social world and who has exhibited
17 anti-social qualities. He merits the
18 diagnosis as do a significant proportion
19 of those who are incarcerated, but he
20 does not mirror the diagnosis of an
21 individual who is incapable of relating
22 to people.

1 Q. Another thing is that he talked to you a
2 ble also a little bit about his legal history. He
3 has been in prison before?

4 A. He has.

5 Q. And outside of a couple of minor infractions,
6 I believe not cutting his fingernails,
7 Nathaniel's using somebody else's radio
8 and having contraband, which I believe
9 was a tape recorder, he has done quite
10 well in prison?

11 A. Yes, he has.

12 Q. And would you expect somebody that had his
13 problems to do better in prison?

14 A. Yes. First of all, he did better in the
15 structured program way back when he was a
16 kid in school. With structure, he
17 performs much better than when he's on
18 his own making his own decisions. His
19 judgment is poor. He gets involved in
20 drugs and his judgment is poorer. In
21 prison, he can't do that. In prison he
22 has a very definite life program to

1 follow. The fact that he tends not to
2 get into trouble also fits with the fact
3 that he does have the capacity to get
4 along with other people and to have some
5 people oriented skills. So, he also
6 retains, of course, a loyalty and a love
7 for his family. So, there's human
8 feeling that is part of the way in which
9 he operates.

10 Q. And how about the relationship with Donna
11 Roberts?

12 A. It was clearly a very destructive relationship
13 for the victim most assuredly, but also
14 for the people involved. Up until the
15 time that relationship took place,
16 Mr. Jackson, although he had an
17 anti-social life style, criminal life
18 style in many respects, he had not been
19 involved in this kind of activity that
20 leads to murder or serious harm to other
21 human beings. He's basically an
22 individual -- well, he's an individual

1 who has had some bad experiences in a
2 relatinal context. He's very
3 insecure, though he tries to pretend that
4 he's very adequate. Again, something
5 that we find in ADHD kids who have been
6 in an environment that basically tells
7 them they are bad kids, so they have to
8 do something about how they feel about
9 themselves. In this relationship, I
10 think he received a certain amount of
11 reassurance. He was told that he was a
12 great guy. It made him feel good. It
13 made him feel like he was somebody
14 special. The relationship was built on
15 that. The relationship has a couple of
16 interesting characteristics. It was a
17 bi-racial relationship. And it was also
18 a relationship between Mr. Jackson and a
19 much older woman. Mr. Jackson's prior
20 relationships though at least in one
21 instance, perhaps more than one, but
22 certainly in one, there was a white

1 female involved. Suggesting that he's
2 capable of being attracted to persons of
3 both races. However, none of them
4 involved older woman. The attraction to
5 an older woman could possibly reflect his
6 knowledge that he needed somebody to
7 provide him with structure and he thought
8 that she might do that. I also can't
9 ignore, of course, that there was a
10 pecuniary motive as well.

11 Q. And Doctor, this report that has been marked
12 Exhibit P, that has been prepared by
13 yourself with the aid of the information
14 you obtained along with, I believe Donald
15 McPherson did a lot of the testing?

16 A. Yes.

17 Q. That is the report you provided myself, the
18 State and the Court?

19 A. That is correct.

20 Q. And I notice that kind of talk a little bit
21 more about Donna's relationship, kind of
22 offered Nathaniel some stability in life

1 too, did it not?

2 A. Yes, at least apparently, she would have been
3 seen as the person. She had a job, she
4 had an adequate living situation,
5 certainly more adequate than he had ever
6 experienced.

7 Q. And he was kind of seeking out some type of
8 you think instability?

9 A. Yes, and that is how he at least views it in
10 his own retrospective. He thought he
11 would be more stable with her.

12 Q. And in preparing for this, did you have a
13 chance to listen to some of the tapes
14 that were recorded between Donna Roberts
15 and Nathaniel Jackson from the prison and
16 also review some of the letters?

17 A. I did.

18 Q. And did it appear to you that Donna Roberts
19 was playing some type of a role?

20 A. Yes. That was obvious. She was responding.

21 He was asserting a sort of crude
22 masculinity, which he acknowledges in his

1 discussions with me. She was playing
2 back to him. Her voice is sexy, it is
3 breathy, it plays back and forth with the
4 same content. Sometimes been called
5 phone sex. And the letters, however, are
6 of a similar type.

7 Q. Is there anything particular that we haven't
8 covered that you think is important?

9 A. No. I think we have covered just about
10 everything.

11 Q. I have one final question. If you had to sum
12 up, is Nathaniel Jackson a product of his
13 own physical problems or is he a product
14 of his environment?

15 A. As it is with all of us, he's a product of a
16 combination of factors. The underlying
17 ADHD means that he has a physical
18 neurological disability. It affected his
19 behavior in his capacity to conform that
20 behavior to expectations. The school did
21 not recognize the nature of that problem,
22 nor was there effective intervention made

1 until very late, and that was not a
2 complete one. He grew up in an
3 environment where in order to survive,
4 you have to learn certain amounts of
5 aggression and how to deal with
6 aggression. And he used drugs, which
7 would then interact to make his own
8 functioning worse. All of those things
9 put together began to explain the
10 totality that he is.

11 MR. CONSOLDANE: Thank you.

12 MR. WATKINS: I would request maybe
13 a 15 minute break. I would like to look at some of
14 the records.

15 THE COURT: Folks, let's take 15
16 minutes. You are not to discuss anything or form
17 an opinion until you return.

18 (Court in recess at 2:25 p.m.)

19 (Resumed in Open Court at 3:00 p.m.)

20 CROSS EXAMINATION BY MR. WATKINS:

21 Q. Dr. McPherson, I know I thanked you for your
22 records and I'm going to mark those as an

1 Exhibit.

2 A. That is fine.

3 Q. I'm going to ask you some questions, maybe two
4 or three from those records.

5 A. That is fine.

6 Q. And since you and I know each other from past
7 cases, it makes it a little bit easier or
8 maybe a little bit harder to endure, I
9 don't know whatever it would be. I
10 recognize and from your past testimony,
11 you have testified on behalf of the
12 defense numerous times?

13 A. That is correct.

14 Q. And these cases, you don't testify on behalf
15 of the Prosecutor?

16 A. That is also right.

17 Q. And you personally are against the death
18 penalty, is that fair to state?

19 A. That is fair to state.

20 Q. When you do the examination in this case, and
21 look at the things that you look at, you
22 are doing something that you are quite

1 familiar with, that is dealing with the
2 death penalty case?

3 A. Yes.

4 Q. And as a forensic psychologist, you are
5 different from a psychiatrist in the
6 sense that you don't prescribe medicine
7 and there's certain things you do
8 differently?

9 A. Correct.

10 Q. But, I think both you and a forensic
11 psychiatrist would use a DSM IV?

12 A. Yes.

13 Q. And therefore, in order to communicate to a
14 Jury such as the one we have here, you
15 try to agree on terms and definitions?

16 A. Correct.

17 Q. So we could understand better what you are
18 telling us?

19 A. Correct.

20 Q. Now, I understand that in this case, you were
21 retained by the defense, and when was
22 that?

1 A. There was a motion for my appointment. The
2 Judgment Entry is stamped March 25, 2002.

3 Q. And how many hours did you spend with him?

4 A. With the Defendant, probably myself, I spent
5 about between two and four hours with
6 him. My husband, who is working with us,
7 spent several hours with him doing the
8 test administration.

9 Q. Did he do the testing, your husband?

10 A. Well, he did the administration of the test
11 and provided me with the data, and
12 interacted with the Defendant during that
13 time. And I also administered the
14 Rorschach myself.

15 Q. So you don't have anything other than the two
16 to four hour period total that you
17 personally spent?

18 A. Yes, that is correct.

19 Q. Now you did have discovery materials and other
20 things that the defense provided you,
21 such as the school records, is that
22 correct?

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1 A. Well, we actually went down and got the school
2 gave you? records. There were a lot of other
3 materials relative to his past record and
4 this offense that were part of the
5 discovery materials that we discussed or
6 reviewed with counsel.

7 Q. Did you find any records dealing with
8 hospitalization for mental illness?

9 A. No.

10 Q. Did you find any records of hospitalization
11 dealing with any neurological problem?

12 A. No.

13 Q. Now, when you went through the things that the
14 State gave, you have already talked about
15 the video tape?

16 A. Correct.

17 Q. And you talked about the letters?

18 A. Yes.

19 Q. And you talked about the prison tape?

20 A. Yes.

21 Q. Would you tell the Jury how much time you

22 spent reviewing the letters and the tapes

1 and all of the evidence or things that
2 the defense gave you?

3 A. I actually don't have an hour count at hand.

4 There were, I spent a couple of hours
5 listening to the tape, various tapes. I
6 did not listen to every one of them, but
7 sampled them. I spent time reviewing
8 records probably several hours, but I
9 would have to go back to my office and
10 start looking at the hour counts to tell
11 you about that.

12 Q. When you say several hours, could you ballpark
13 it for the Jury?

14 A. As long as it is understood that my memory in
15 trying to estimate my time isn't as good
16 as my secretary's ability to track it,
17 probably between five and ten hours, but
18 I'm not sure.

19 Q. How many letters did you read?

20 A. I don't remember. There was a stack of them.
21 I remember reading in detail, looking in
22 detail at some of the more recent ones

1 and more or less sampling those. I was
2 interested in the quality of the
3 relationship, but not in the facts of the
4 case per se.

5 Q. Let me ask you this. How would you make a
6 determination what letters would deal
7 with the quality of the relationship?

8 A. By the wording they used.

9 Q. And so did you look at all 280 letters?

10 A. No, I did not read all 280 letters.

11 Q. Did you read 180 letters?

12 A. Probably not. Probably more in the area of
13 ten to 12.

14 Q. So, there may have been important facts in
15 those letters that you missed?

16 A. That could be.

17 Q. Now, you said that you listened to two hours
18 of tape. Would that include the video
19 statement of Nathaniel Jackson?

20 A. I also listened to that. But that was some
21 time ago.

22 Q. You did see the video?

1 A. Yes.

2 Q. And you also listened to the prison tapes?

3 A. Yes, those as I said, I sampled through. I

4 did not listen to all of them.

5 Q. Did you listen to the last one on December 8?

6 A. I think so.

7 Q. And how many hours did you spend listening?

8 A. Again, I am really uncomfortable with this,

9 because I am estimating and I'm not at

10 all sure that I am doing it accurately.

11 A lot of that listening took place back

12 last Spring and my ability to forecast or

13 remember how much I was listening to them

14 is really quite limited. My recollection

15 is I listened for about two hours.

16 Q. If I told you there were over three hours, it

17 is obvious you didn't listen to all of

18 that?

19 A. And I have stated that consistently.

20 Q. Now, you did tell the Jury that you noticed

21 that Donna Roberts talked sort of, I want

22 to say that you used a term, "Southern

1 ... belle"?

2 A. Yes.

3 Q. That is how you described Donna Roberts?

4 A. It seemed like a descriptor of her voice and
5 the cadence in which she played back to
6 him. That was the role that she aroused
7 to my mind.

8 Q. Now, did you notice the different -- and you
9 indicated that she talked differently
10 with Nathaniel basically, right?

11 A. With Nathaniel, versus when she was speaking
12 for herself.

13 Q. On the video?

14 A. On the video.

15 Q. Did you notice the difference between the way
16 Nathaniel Jackson was on the video tape
17 with the police, and the way he was
18 talking to Donna?

19 A. Yes.

20 Q. So, both were behaving differently with each
21 other?

22 A. Yes.

1 Q. Now, you took down a history from the
2 neighborhood, it was Defendant, is that correct?

3 A. That is correct.

4 Q. And that is part of your report, which has
5 been Exhibit P, and when you take a
6 history, you are basically taking it from
7 the person?

8 A. Correct.

9 Q. And they may or may not be telling you the
10 truth?

11 A. That is also correct.

12 Q. And so you have to make some assumptions?

13 A. Sometimes.

14 Q. Now, in your report, you said that the
15 Defendant said he was brought up in an
16 extremely violent neighborhood?

17 A. Correct.

18 Q. And did you talk to anyone else, when he was
19 initially brought before he left home?
20 Did you talk to anyone else to make a
21 determination that that was true?

22 A. No.

1 Q. Assuming that his mother said that it wasn't a
2 you know that a bad neighborhood, it wasn't a rough
3 neighborhood, it could well be that the
4 neighborhood may have been pretty good?

5 A. It could have been, but it wasn't.

6 Q. So you would disregard the mother?

7 A. Well, yes. We have been to the neighborhood,
8 school records. Mr. McPherson was at the neighborhood
9 and we have the evidence from the school
10 records. It is fairly unusual to have a
11 letter asking for a child to be excused
12 because of gun play and we also have the
13 evidence of his body with the several
14 razing injuries on his arm which came
15 about as a result of his being shot at as
16 an adult all of which was taking place in
17 the neighborhood.

18 Q. First off, your point about your husband being
19 there, you are dealing with 2002. The
20 neighborhood back in the seventies and
21 eighties may well have been a different
22 neighborhood?

1 A. I suppose that is possible.

2 Q. And also you mentioned that his mother, not
3 his mother, but the school records
4 indicated he was shot at or someone shot
5 him?

6 A. The letter from his mother, sent to the
7 school.

8 Q. But it was in the school records?

9 A. It was in the school records, correct.

10 Q. It didn't say where, did it?

11 A. No.

12 Q. And the fact of the matter is, when he was
13 shot, you don't know where he was living,
14 do you?

15 A. At the time --

16 Q. When he was an adult?

17 A. As an adult, no, he was not living with his
18 mother.

19 Q. I am talking about when he was shot, you
20 cannot verify where he was when he was
21 shot, can you?

22 A. That is correct.

1 Q. Now, do you believe that the Defendant was
2 truthful to you?

3 A. I believe the Defendant was truthful to me. I
4 think he was truthful in the things, in
5 the things where I had independent
6 corroborating evidence, he was truthful.
7 I cannot tell you that I know him to be
8 truthful in every statement that he has
9 made, because I don't have corroboration
10 for every statement he's made.

11 Q. And that would be an example of the
12 neighborhood, because you have to have
13 corroboration, correct, whatever it may
14 be, is that fair to state?

15 A. I think I have some corroboration.

16 Q. You indicate in your testimony that he got
17 into a lot of difficulty and he tended to
18 have problems with other students at
19 times, is that correct?

20 A. That is correct.

21 Q. In fact, I think the record and your report
22 indicate that he was having problems from

1 grade one through grade eleven?

2 A. That is correct.

3 Q. And I would like to -- this has been marked

4 State's Exhibit 403-A. 403-AA through

5 403-RR. State's Exhibit 403-A through

6 403-RR. These are the records that you

7 brought with you?

8 A. Yes. They are.

9 Q. Now, I want to -- I want you to tell me if you

10 recall reading in particular, a report,

11 Jay Seiser, S E I S I E R, which was done

12 on January 17, 1986. And the

13 house-tree-person projective test, was

14 that administered by you or your husband?

15 A. No.

16 Q. But you did administer some projective test?

17 A. Yes.

18 Q. You recognize that as a test that is used by

19 psychologists?

20 A. It is a technique. It is actually not a test,

21 although it is referred to rather loosely

22 as a test, but there's a technical

1 definition between test and technique.

2 It doesn't have the kind of normative

3 psychometric properties that are formally

4 ascribed to a test. It is often used to

5 get a feeling of a person's aspects of

6 his self presentation.

7 Q. When a person in this case, would be a student

8 about 14 years of age would say something, you

9 would listen to what he had to say?

10 A. That would be true regardless of his age.

11 Q. That is why you would include significant

12 things that are said in the report, fair

13 to state?

14 A. Yes, that is fair to state.

15 Q. And you looked at this. And it indicated

16 during this administered, what is called

17 the house-tree-person, in complete

18 sentences?

19 A. Yes.

20 Q. Nathaniel made no bones about the fact, "He's

21 aggressive, hates whites, except for one

22 boy, and tends to hurt them or anyone

1 else who tries to get through him. There
2 was no evidence of positive feelings
3 towards anyone, including his teachers
4 and parents. Ain't nothing to me. He
5 projected the idea that he's afraid of
6 nothing, including consequences of his
7 own misbehavior and that he admits he
8 feels no guilt about it." Then the
9 examiner says that Nathaniel wants to
10 project a tough guy image. Is that fair
11 to state?

12 A. That is fair to state.

13 Q. Going on to another report on 2-23, on
14 February 23, 1989, 403-G. You mentioned
15 that he was in the Stambaugh Traditional
16 School?

17 A. Correct.

18 Q. And in fact, he was in a number of programs
19 including probation for at least seven
20 times?

21 A. Yes.

22 Q. And he went to drug treatment?

1 A. Yes.

2 Q. He went to community corrections for months on
3 end in 1992, 1993?

4 A. Yes.

5 Q. And so there was a lot of intervention, not
6 only from the schools, but from the
7 criminal justice system, fair to state?

8 A. Into his drug use, yes.

9 Q. Now, it states here, "Nathaniel was placed at
10 Stambaugh Traditional, with teacher Sara
11 Raveti for the remainder of his seventh
12 grade year. He remained at Stambaugh for
13 grade eight, because of good behavior
14 progress, he was placed in a less
15 restrictive setting, the SPH satellite
16 unit at Rayen High School the following
17 year. During this school year, 1988,
18 1989, Nathaniel was transferred back to
19 Stambaugh because of threatening,
20 aggressive behavior. One day he burned
21 his and another student's work sheets,
22 laid across a table in the classroom, and

1 refused to go to time out. When a
2 teacher approached him, he swung at him."

3 A. Yes.

4 Q. So, at this point in time, again we see, and
5 this is 1989, he's at this time 17 years
6 of age, and he's aggressive and
7 threatening to people around him in
8 the school?

9 A. Yes.

10 Q. And this is a structured setting school?

11 A. This is the step down program. Then they
12 return him.

13 Q. You don't consider a high school a structured
14 setting?

15 A. Not anywhere near structured as he needed,
16 evidently.

17 Q. Now, another teacher also -- I refer to 403-N.

18 And this is, I believe 1988. It was in
19 the order that you gave it to me. This
20 is another teacher who tried to remove
21 him from his seat.

22 A. I think that is the same incident, actually.

1 Q. If it is, it is a different named teacher.

2 A. I would have to check that.

3 Q. This is 1988. The other one was in 1989.

4 A. Okay.

5 Q. The last one was 1989. This one is 1988?

6 A. This is 1988. And whatever that is.

7 Q. The other one I read to you is 1989?

8 A. Where's the other one? I think it is a
9 report, is it not?

10 Q. You think it's the same?

11 A. That report is written after this incident,
12 and I think he's referencing to this
13 incident as part of it. There are two
14 reports here written at that time. The
15 one you just showed me written, which
16 begins, "Nathaniel attended class on
17 9-9-98," and continues, and then there's
18 a second report signed by a teacher
19 referencing 9-9-1988.

20 Q. The records, I don't want to spend time and
21 I'll give you that and the records will
22 be available to the Jury, but the purpose

1 here is that the teacher tried to remove
 2 the one on Nathaniel from his seat and bring to
 3 him -- to bring him to time out. He
 4 became very hostile and verbally abusive.
 5 Mrs. Semanti managed to get him out of
 6 his seat, at which time he flung his arm
 7 out and thrust his pointy finger very
 8 close to his face saying, "You better
 9 never touch me again or it will be the
 10 last M F-ing thing you ever do."

11 A. Yes.

12 Q. So, it is apparent that he was aggressive, and
 13 very threatening throughout his school
 14 history?

15 A. That is correct.

16 Q. Now, would you say that he had conduct
 17 disorder by the age of 17?

18 A. Yes, I would.

19 Q. And conduct disorder, again, is not and I
 20 should not say again, but it is not a
 21 mental disease or defect?

22 A. That is correct.

1 Q. And in a mitigation phase of a trial, you are
2 familiar with the one subsection dealing
3 with whether or not a person has a mental
4 disease or defect that substantially
5 impacts his conduct?

6 A. I'm familiar with that, yes.

7 Q. He doesn't qualify?

8 A. That is also correct.

9 Q. So, he's not a person suffering from a mental
10 disease, or a mental defect, that
11 affected the criminality in this case?

12 A. That is correct.

13 Q. Now, were you familiar with, during his
14 childhood, whether or not he was sexually
15 or physically abused?

16 A. He denied being sexually or physically abused.

17 Q. And in fact, there's no evidence in any
18 records that he was ever sexually or
19 physically abused?

20 A. That is also correct.

21 Q. And did you talk to other family members of
22 his family?

1 A. I did.

2 Q. Who did you talk to?

3 A. I talked to his mother and to his sister.

4 Q. And did his sister tell you that, and his
5 mother tell you that he went to church?

6 A. I don't believe I asked them that question. I
7 would not be surprised one way or the
8 other.

9 Q. So, is that an important thing to know how he
10 was being brought up? To me that would
11 be somewhat important if you're looking
12 at a child, even if he's in a poor
13 neighborhood that a parent or grandparent
14 takes the time to take a child to church
15 in his formative years, that that may be
16 a positive thing. Yes or no? Is it
17 important?

18 A. I don't know. Depends on the person. Some
19 families go to church regularly. Some
20 families do not. Some families do not
21 hold a belief in God, some do. But those
22 things do not separate out people with

1 ... problems from those who have them.

2 Q. But certainly people who were being brought up

3 without physical, sexual abuse and being

4 taken care of as best the parents can, is

5 better than a lot of people you see that

6 are abused physically, sexually and don't

7 ever have any guidance as to right or

8 and when you wrong, would you agree with that?

9 A. I would certainly agree with that.

10 Q. Now, you indicate that you learned that he had
11 two children?

12 A. Yes.

13 Q. And the one child is seven and you told a
14 story about the cerebral palsy child?

15 A. That is correct.

16 Q. And in your report, however, you mentioned
17 that there's a restraining order against
18 him?

19 A. That was what he told me.

20 Q. Did he tell you why there was a restraining
21 order against him to see the one year
22 old?

1 A. He said that he simply said that he made an
2 already an overture to come and see her, and he was
3 accused of stalking and was not allowed
4 to do that. It is a boy, I think.

5 Q. Now, going to the test, you testified and
6 Attorney Consoldane brought up the issue
7 of mental retardation. He said mental
8 retardation and then you answered
9 yes, that regarding his IQ. At one point, he had
10 70 in school, correct?

11 A. Correct.

12 Q. And I think there was a full test of 72 or 73?

13 A. Yes.

14 Q. And every single test he was given, even ones
15 that were given 15 years ago, he was not
16 tested at a mental retarded range, is
17 that correct?

18 A. That is correct.

19 Q. And the test that he took from you --

20 A. Correct.

21 Q. -- established that he was in average or low
22 average range?

1 A. Dull normal is sometimes used or low average,
2 and I think I already explained the ways
3 in which I'll interpret that score as
4 referencing probably, slightly better
5 ability than it would indicate.

6 Q. I think you said low average or better in your
7 report?

8 A. Or better, right.

9 Q. When you indicated now, the IQ test, which
10 test did you give?

11 A. The one that we gave was the Wechsler Adult
12 Intelligence Scale, third revision.

13 Q. And that is where he had the full scale 84 and
14 the performance IQ of 89?

15 A. Correct.

16 Q. And you indicated in the one test, the Bender?

17 A. Bender-Gestalt.

18 Q. There were some distortions and in
19 inadequacies that appeared to be
20 reflective of some lack of investment in
21 performance. Do you remember writing
22 that?

1 A. Yes.

2 Q. What does this mean?

3 A. It meant that it was somewhat sloppily
4 executed, but I did not see the kinds of
5 signs that I would expect to see if there
6 was a gross neurological defect of a type
7 that you might get with serious cerebral
8 damage.

9 Q. Was the Defendant at times like indifferent,
10 didn't care?

11 A. The performance would suggest he was not
12 invested in this test.

13 Q. Then you dealt with the wide range of
14 achievement tests; do you recall that?

15 A. Correct.

16 Q. And then you conclude above results reflected
17 a significant relative deficit in reading
18 skills?

19 A. Correct.

20 Q. What does that mean?

21 A. It means that the reading sub test, he did not
22 do as well as he did on the spelling and

1 arithmetic sub test, which were clearly
2 at an average or better level. Reaching
3 a high school grade equivalent
4 performance, whereas his reading grade
5 level on this test was fifth grade. In
6 all cases, the achievement was adequate
7 for day-to-day living.

8 Q. You read Donna Roberts' letters, the
9 communication between the two?

10 A. Correct.

11 Q. Did you find that there was pretty good
12 communication and use of words, even
13 though some words he would not spell
14 correctly?

15 A. That is a reasonable statement.

16 Q. Now, what is the MMPI II?

17 A. The Minnesota Multi-Phasic Personal Inventory,
18 second revision is a true, false item
19 test, which allows one to make inferences
20 as to whether there are any serious
21 psychological or mental illness problems,
22 whether there are some character traits

1 ... or personality problems and how a person
2 ... associated with may be reacting at the moment. Various
3 ... scales are within the test and are looked
4 ... at.

5 Q. And in that test, you found no serious mental
6 ... illness problem, is that correct?

7 A. That is correct.

8 Q. And in that test, you write that there was a
9 ... spike four configuration, that reflects
10 ... endorsements of anti-social attitudes, or
11 ... impulsive behaviors?

12 A. That is correct.

13 Q. And that would be the scale that would look at
14 ... whether or not a person is an anti-social
15 ... personality or sociopathic personality?

16 A. Not exactly. It was originally thought to be
17 ... such a scale, but it has been found to be
18 ... a combination of alienation, attempting
19 ... to deny any problems when problems exist,
20 ... having difficulty getting along with
21 ... authority, and feeling uncomfortable with
22 ... himself. It is a multiple -- it's a

1 scale with multiple factors. It is,
2 however, associated with the things that
3 I have done here which is anti-social
4 attitudes with impulsivity with getting
5 into difficult, quite frankly, it is also
6 associated with being independent of some
7 of the social niceties that can come
8 about if you happen to work in certain
9 fields.

10 Q. You indicate more or less that he's a type of
11 person that hasn't learned from his past
12 mistakes and tends to act out impulsively
13 without looking at the consequences?

14 A. That is correct.

15 Q. And he's done that repeatedly and repeatedly?

16 A. Correct.

17 Q. And he can lose control in that scenario?

18 A. That is correct.

19 Q. And we know that his, and I'll get to this,
20 but he has escalated from certain types
21 of crimes and we'll get into the ultimate
22 crime?

1 A. Yes.

2 Q. It is fair to state that when you look at the
3 Rorschach and you look at the TAT test
4 and the test that you gave him, that he
5 doesn't learn from his mistakes even
6 though he's 30 years of age?

7 A. That is certainly true in many aspects of his
8 life, yes.

9 Q. Now, his legal history which you cover on page
10 five?

11 A. Correct.

12 Q. You indicate that he was incarcerated four
13 times, is that correct?

14 A. Correct.

15 Q. And you mention that you had found that during
16 that period of time, that he was involved
17 in non-violent behavior?

18 A. Non-violent at the level of the current
19 offense. He did not cause, to my
20 knowledge, he did not cause bodily harm.

21 Q. So, if I told you by law breaking into
22 somebody's home is considered a violent

1 crime, you would disagree with that?

2 A. The No. I would accept that, because I know that
3 to be a true statement. However, I was
4 using the word violence in the more
5 colloquial sense of having actually done
6 violence to another human being.

7 Q. Well, he was involved with aggravated
8 burglaries as a teen?

9 A. In Correct.

10 Q. And then he continued as an adult, and his
11 first incarceration at Lorain in your
12 report is 1-92 for aggravated burglary,
13 is that correct?

14 A. That is correct.

15 Q. Then he went back in February 1996 for having
16 a weapon as a convicted felon. He had a
17 gun?

18 A. Yes.

19 Q. And then he went back two other times?

20 A. Correct.

21 Q. And again, you go through in your report,
22 school records, which I have already

1 covered. Now, when he did things, he
2 made a choice. There's some evidence for
3 this Jury that he understood, his sister
4 said he knew right from wrong?

5 A. Yes.

6 Q. And he made a choice at 13 to take marijuana,
7 is that fair to state?

8 A. That is fair to state.

9 Q. And that he engaged with other more popular
10 drugs, including cocaine and crack
11 cocaine?

12 A. Yes.

13 Q. And again, he made the choice to do that?

14 A. Correct.

15 Q. And then when he would occasionally get
16 involved in the use of alcohol, he made
17 the choice to do that?

18 A. Also correct.

19 Q. And throughout his misbehavior and criminal
20 conduct, you find in the records, that he
21 had treatment and he had probation and
22 probation and probation?

1 A. That is correct.

2 Q. And things did not get better. They got

3 worse?

4 A. That is correct.

5 Q. And every time, for example the last time he

6 went to prison, he said that going to

7 CCA, that he's found God and he's going

8 to straighten out his life?

9 A. Yes.

10 Q. You remember reading that?

11 A. I remember reading something to that effect.

12 Q. Where the examiner felt he was being sincere?

13 A. Yes.

14 Q. Obviously people can con individuals at times,

15 right?

16 A. Yes.

17 Q. And people can manipulate people at times?

18 A. Yes.

19 Q. And anti-social personalities are pretty good

20 at that?

21 A. Some.

22 Q. And you indicate in your direct testimony that

1 there's what you classify as good and bad
2 anti-social personality disorders?

3 A.: Not exactly. I said there was a category
4 known as psychopathic or sociopathic
5 behavior that represents a sub set of
6 anti-social behavior or an overlapping
7 category with it, but was not
8 central coincidental with it.

9 Q.: I want to know if you agree with the statement
10 made in DSM-IV. Take a look at that.

11 You recognize DSM-IV?

12 A.: Yes.

13 Q.: You use this?

14 A.: Yes.

15 Q.: Your diagnosis on Axis II was 301.7,

16 anti-social personality disorder?

17 A.: Correct.

18 Q.: The essential feature of anti-social

19 personalities disorder is a pervasive

20 pattern of disregard for and in violation

21 of the rights of others, that begins in

22 childhood, or early adolescence and

1 continues into adulthood?

2 A. Correct.

3 Q. That fits Nathaniel Jackson?

4 A. Yes.

5 Q. This pattern has also been referred to as

6 psychopathy, sociopathy or dissocial

7 personality disorder because to seek

8 that in as manipulation or central features of

9 an anti-social disorder, it may be

10 especially helpful to integrate

11 information required from systematic

12 clinical assessment with information

13 collected from collateral sources?

14 A. Correct.

15 Q. And therefore, the pattern is one dealing with

16 psychopathy and sociopathy, you are

17 simply saying from what you see in this

18 Defendant, that he's not as bad as some

19 others?

20 A. Correct.

21 Q. How many others have you testified about that

22 were in prison planning to murder a

1 person when they got out of the prison?

2 A. This case has its unique characteristics, not
3 the least of which is that feature.

4 Q. Did you read a letter that this man wrote
5 saying that when he got out, he would
6 shoot the victim in the F'ing head?

7 A. Yes.

8 Q. So, you don't put that in as bad as others?

9 A. There have been crimes in cases I have
10 covered, where what was done to people
11 was clearly worse, if one is going to
12 start ranking that sort of thing, than
13 what was done to this victim. The fact
14 is all of them resulted in the death of
15 an individual.

16 Q. I agree. I'm asking if you have ever had one
17 like this one?

18 MR. CONSOLDANE: I'll object. I
19 don't think that is a proper question. Whether
20 she's had any other cases like this in the past is
21 really of no consequence.

22 THE COURT: Unless you wish to draw

1 some comparison as to other cases like this, I
2 don't know where that is relevant. Sustained.

3 Q. Now, I notice -- well, I already covered your
4 report dealing with other information in
5 part, but we talked about the Southern
6 belle and that, and you indicated in your
7 report that they were planning the demise
8 of Mrs. Roberts' husband?

9 A. Or ex-husband as the case may be.

10 Q. But you said husband, right?

11 A. But I realized that they were living together,
12 but there had been a divorce. There was
13 ambiguous status.

14 Q. And the information -- well, never mind. I
15 won't go any further with that. You
16 indicate that, and I go into this
17 anti-social personality disorder, before
18 I go into that, your diagnosis is
19 attention deficit hyperactivity disorder,
20 chemical dependency, and then there's
21 status, post-gunshot wound. None of
22 those are connected with any mental

1 disease?

2 A. Not as that term is used in the legal system,

3 correct.

4 Q. And you say that his anti-social

5 characteristics are a function of his

6 involvement in his counter culture of his

7 neighborhood, correct?

8 A. I say that, yes.

9 Q. And his neighborhood as you know it, is where?

10 What is his neighborhood?

11 A. His neighborhood would consist of those places

12 where he lives and the people with whom

13 he interacts. It would include the

14 places he lived as a child, but it would

15 also include those places where he lives

16 as an adult, in which he refers to as his

17 neighborhood.

18 Q. And the neighborhood that he was involved

19 with, being incarcerated, was the

20 neighborhood of drugs, violence and

21 burglaries?

22 A. During incarceration?

1 Q. Yes.

2 A. No, that neighborhood would have much less in
3 the way of drugs, and less in the way of
4 violence. They both happen to be
5 regrettably enough present, but it is a
6 much lessor level of undisciplined
7 behavior.

8 Q. Didn't you get the impression from reading the
9 letters and listening to the tape that
10 Nathaniel Jackson was leaving his
11 neighborhood, the hood and going to 254
12 Fonderlac and was increasing his lot in
13 life, more or less?

14 A. I'm not sure I understand your question.

15 Q. There's a lot of money here. You mentioned
16 the pecuniary interest, and the bottom
17 line is that while he's in prison, he's
18 planning to kill Robert Fingerhut, and
19 he's going to graduate to a new
20 neighborhood.

21 MR. CONSOLDANE: I'm going to
22 object. Is he testifying?

1 MR. WATKINS: I asked a question.

2 THE COURT: He's asking a question.

3 You are drawing, not exactly a hypothetical but a
4 question, as a hypothetical from the information in
5 her report. Overruled.

6 Q. You see what I am getting at?

7 A. I don't know what the question is. I

8 don't understand what you have been saying.

9 Q. You indicate that his functional involvement
10 is -- I am only pointing out that his
11 neighborhood is changing when he goes to
12 254 Fonderlac?

13 A. The neighborhood is going to be different as
14 he anticipates it or sees it.

15 Q. His plan is to kill this man for money?

16 A. Yes.

17 Q. And to be with Donna?

18 A. And to be with Donna, right.

19 Q. And you mentioned that Donna denied in her
20 video tape, her involvement until the
21 end?

22 A. Correct.

1 Q. And Nathaniel Jackson denied Donna's
2 involvement in the end of his video, is
3 that correct?

4 A. That is also correct.

5 Q. So they were loyal to that respect?

6 A. In that respect, yes.

7 Q. And you mentioned that he's capable of loyalty
8 and I have to persons who are important to him, fair
9 to state?

10 A. Fair to state.

11 Q. He was willing to kill for loyalty, right?

12 A. Apparently. At least in response to the plan
13 that they made together, yes.

14 Q. And when he's been in prison and you state the
15 structured environment, prison is the
16 place that he could be controlled, is
17 that correct?

18 A. Correct.

19 Q. His experience in prison has been short term
20 prison, correct?

21 A. Correct.

22 Q. And if he's in prison and he becomes loyal to

1 somebody, and if that is somebody wants
2 somebody killed in prison, like a guard
3 or other prisoner, could he or would he
4 impulsively kill that person?

5 A. I don't have any basis for answering that
6 question, because the crime took place
7 under conditions of a sexual romantic
8 relationship, and I have no basis for
9 saying that a friendship with another
10 male would lead to the same kind of
11 output, if you will, is especially
12 lacking any real payoff which is the
13 other component of this crime, that both
14 of these people thought they were going
15 to wind up with a new life. If you kill
16 a guard in prison, you don't get a new
17 life. If you don't get caught, you may
18 not get a terrible outcome, but --

19 Q. There are a lot of reasons people get angry
20 with people in prison?

21 A. Absolutely.

22 Q. And you read or you should have read, and

1 probably read how he made up his mind,
2 when he makes up his mind he wants to do
3 something, he does it, and in this case,
4 not only he planned, he asked for gloves,
5 asked for handcuffs, because he made up
6 his mind, and every single time he
7 committed a crime in the past, he didn't
8 learn and it escalated and he committed
9 other crimes?

10 A. That is correct.

11 Q. If you would have been here two years ago on
12 his theft offense, you wouldn't have
13 predicted what he did to Robert
14 Fingerhut, would you?

15 A. That is right. I would not have a basis for
16 that.

17 MR. WATKINS: Thank you. No other
18 questions.

19 REDIRECT EXAMINATION BY MR. CONSOLDANE:

20 Q. Just a couple of short questions. You
21 wouldn't have been able to predict that,
22 because he had no history of violence,

1 did he?

2 A. Correct.

3 Q. This is the first time that he's had any type
4 of problem that involved violence?

5 A. In the sense that I used it earlier regarding
6 to violence against another person

7 causing physical harm.

8 Q. I notice that the Prosecutor made a point to
9 say that there was no mental defect and
10 that is correct?

11 A. That is correct.

12 Q. But, by looking at all of his problems that he
13 had both environmental and physical, it
14 kind of explains what kind of control

15 that Donna Roberts would have over him,
16 is that not correct?

17 A. It is consistent with his entire history and
18 the basis or the way of behaving are
19 consistent with winding up in a
20 relationship that exerts considerable
21 power over him, yes.

22 Q. And one other thing, from looking over the

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1 prison records that Mr. Watkins was
2 talking about, were you able to form an
3 opinion as to how you believe he will
4 behave in prison now?

5 A. Yes.

6 Q. And what is that?

7 A. Past behavior is the best predictor of future
8 behavior, and his past behavior, whenever
9 in prison, has been to conform to prison
10 rules and regulations. So the best
11 estimate of his future behavior is that
12 he will function best in prison
13 environment.

14 MR. CONSOLDANE: Thank you.

15 RECROSS EXAMINATION BY MR. WATKINS:

16 Q. Just one question. When he told you about
17 being shot, numerous times?

18 A. Yes.

19 Q. Did he tell you about seeing other chumps
20 killed?

21 A. No, not what he's told me about.

22 Q. Do you remember reading about that?

1 A. Vaguely at this point. You will have to

2 refresh my memory a little bit.

3 Q. There was a letter where he talked about how

4 chumps like Robert Fingerhut, he sees

5 them killed on the streets every day?

6 A. All right.

7 Q. Did he tell you whether or not he shot back

8 and killed anyone?

9 A. Yes.

10 Q. When he was shot, what did he tell you? Did

11 he have a gun?

12 A. The reason why I am hesitating I'm really

13 trying to remember exactly what was said.

14 Q. You might not remember that?

15 A. The problem I'm having is that I know there

16 was a gun involved, clearly, and I know

17 that his intention was to have a gun. I

18 believe he had a gun going in, but I also

19 think I remember that there was some gun

20 available in the environment as well.

21 I'm having some trouble putting all of

22 that together.

1 Q. You don't know how many people he shot, if
2 there was more than one? You don't know
3 that?

4 A. In the course of this crime, there was one
5 person shot.

6 Q. I am talking about before.

7 A. Before, I have no knowledge of him shooting
8 anyone.

9 Q. He never told you?

10 A. He's never told me that he shot anyone, yes.

11 MR. WATKINS: No other questions.

12 REDIRECT EXAMINATION BY MR. CONSOLDANE:

13 Q. In all of the interviews, there's indications
14 that Nathaniel Jackson had been shot, but
15 there's no indication that he ever shot
16 at anybody else, is that correct?

17 A. That is correct.

18 MR. CONSOLDANE: Thank you.

19 MR. WATKINS: Nothing further.

20 THE COURT: You are excused. We
21 thank you very much. The defense have anything
22 further?

1 MR. CONSOLDANE: Yes. Mr. Jackson
2 would like to make a statement.

3 THE DEFENDANT: I would like to
4 apologize for what happened to the victim. I am
5 very sorry for what happened and I know by me
6 saying sorry ain't going to bring his life back.
7 This is something I have to live with for the rest
8 of my life, and also like for my daughter, to know
9 that she still has a father that is alive and I
10 would like to see her grow up.

11 MR. CONSOLDANE: Was everybody able
12 to hear that?

13 (All nodded affirmatively.)

14 MR. CONSOLDANE: Your Honor, with
15 that, we would request the admission of our Exhibit
16 and we would rest at this time.

17 THE COURT: We'll discuss that and
18 reserve your right, and you have some motions to
19 make on that. I would suggest we let the Jury --

20 MR. WATKINS: The State has no
21 evidence.

22 THE COURT: All evidence is in at

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1 this point on this phase, is that correct?

2 MR. CONSOLDANE: That is correct.

3 MR. WATKINS: Yes.

4 THE COURT: Ladies and gentlemen, I
5 would ask you if you will be kind enough to be back
6 here tomorrow at 9:30 in the morning. We have
7 several matters in the morning that we have to take
8 care of. And we expect 9:30 would be a good time
9 to start.

10 You should make arrangements again, we
11 don't know how long you are going to take on this
12 phase of the trial. So, if you care to bring
13 something with you for overnight or make
14 arrangements, if it goes into that time period,
15 that you could call somebody and have them drop it
16 off down at the hotel. Again, I caution that you
17 are not to watch any T.V., read anything in the
18 newspaper, have any discussion with anybody. Wait
19 until you get back into the Jury room to start
20 going through this evidence and before you arrive
21 at your decision.

22 So, with that, you all have a nice

1 evening. We'll see you tomorrow at 9:30. Thank

2 you. but I'll see you

3 (Jury excused at 3:55 p.m.)

4 THE COURT: The Jury is out of the
5 room? Do you want to cover these Exhibits before
6 we leave.

7 MR. CONSOLDANE: I just have Exhibit
8 P. Do you have any objection?

9 MR. WATKINS: I have no objection.

10 THE COURT: Exhibit P will be
11 admitted. You have moved to admit all of the
12 Exhibits. Only a couple have been used at this
13 time. Is there any reason to send all of those
14 Exhibits back again?

15 MR. WATKINS: I think they show the
16 history and she went through the history of the
17 school and I think they should be given to the
18 Jury.

19 THE COURT: I am talking about --
20 these are fine here. Do you have any objection to
21 those? I am talking about the trial Exhibits.

22 MR. WATKINS: I think we'll withdraw

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1 some of those, but there's not many. I guess we
2 need to go through the list, but I'll wait to see
3 what Tony is going to object to.

4 THE COURT: Those are the records
5 that you reviewed?

6 MR. CONSOLDANE: As far as Exhibits
7 403-A through 403-RR, I have no objection.

8 THE COURT: Those will be admitted.

9 On your original proffer, I'll admit all of those.

10 We'll not send those back to the Jury. If they
11 need any of that though, it will be available for
12 their use. They went over the evidence in great
13 detail in phase one, but I see no reason, nor to
14 send it back again. In any event, they should
15 request anything, then I'll make it available to
16 them.

17 MR. CONSOLDANE: I think just
18 because they requested it, I still think it has to
19 meet a probative standard before it can go back.

20 They were admitted in the --

21 THE COURT: Let's take it one step
22 further. I'll reserve your right to object to any

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1 particular thing. I don't know how it can be
2 objectionable, but it might be. You reserve that
3 right. All motions that haven't been ruled on are
4 overruled. I think I said that previously. It
5 applies at this point. Are there any further
6 motions before we start tomorrow with the closing
7 arguments and give the instruction? Other than a
8 rehash of everything that we have had on the
9 record?

10 MR. CONSOLDANE: I'll just renew all
11 of my motions that I made before, including the
12 ones orally and written.

13 THE COURT: I'll rule on each of
14 those as I previously ruled. The State?

15 MR. WATKINS: Nothing.

16 (Off the record)

17 THE COURT: For the record,
18 Mr. Consoldane is waiving presence of the Defendant
19 while we discuss the last minute changes in the
20 Jury instructions, is that correct?

21 MR. CONSOLDANE: Yes.

22 (Off the record)

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1 MR. CONSOLDANE: We waive the
2 presence of the Defendant. Page two. You are
3 going to change the word convictions to singular,
4 conviction, instead of plural?

5 MR. MORROW: Yes.

6 MR. CONSOLDANE: Then page five, the
7 paragraph is, "that generally a witness may not
8 express an opinion ". I would like to have that
9 same paragraph that they used in the original
10 instructions. They have changed it to slant more
11 towards the Prosecution in this. I don't know why
12 they would have to change that particular
13 paragraph, different than what it was in the
14 original instructions.

15 THE COURT: What changed there?

16 MR. CONSOLDANE: They didn't put
17 down, "However, as with other witnesses, upon you
18 alone rests the duty to determine the weight --"

19 THE COURT: Isn't that OJI?

20 MR. MORROW: All I did was deleted
21 things.

22 MR. CONSOLDANE: You can check that.

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1 My main objection is the next page, page six.

2 THE COURT: Are you agreeable to

3 going along with OJI on the opinion evidence? I

4 think that is OJI.

5 MR. CONSOLDANE: It is not the same
6 as they had. I'll go with the same that was in the
7 first set of instructions.

8 THE COURT: That is standard OJI.

9 MR. WATKINS: I have no problem
10 using the same one.

11 MR. MORROW: If I made a mistake, I
12 apologize. It was not done with any thought.

13 MR. CONSOLDANE: On page six, the
14 top of that, that is not correct. There are two
15 aggravating circumstances relating to Count 1.
16 That should be just the aggravated burglary and the
17 aggravated robbery. Don't need to say the
18 Defendant committed the aggravated murder while he
19 was committing, attempting to commit or immediately
20 fleeing after committing the aggravated burglary.

21 MR. WATKINS: It is a proper
22 statement of law.

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1 MR. CONSOLDANE: It doesn't belong
2 in this. All it is, is the aggravating
3 circumstances, one is the aggravated murder, two is
4 the aggravated robbery. This business about prior
5 calculation and design. They have already been
6 found guilty of that. That is not part of the
7 aggravating circumstances.

8 MR. WATKINS: The aggravated murder.
9 They get the aggravated murder --

10 MR. CONSOLDANE: It is the
11 aggravated burglary or the aggravated robbery.

12 MR. MORROW: That is incorrect. It
13 has to be aggravated murder with prior calculation
14 and design or while committing. That is what the
15 specification requires for them just to find that
16 he did it and aggravated burglary is an incorrect
17 statement of law.

18 THE COURT: An aggravated burglary
19 is an aggravated burglary, it is not a
20 specification to anything.

21 MR. CONSOLDANE: That is what they
22 found. They found the specification and they found

1 the specification of aggravated burglary. That is
2 all that they are to consider. Not the aggravated
3 murder.

4 THE COURT: They explain that the
5 murder is not an aggravating circumstance.

6 MR. CONSOLDANE: It shouldn't be in
7 this definition.

8 MR. WATKINS: My only comment is
9 that you got numerous cases; Getsy has been upheld
10 by the Supreme Court and we have used through Judge
11 McKay, who had Getsy.

12 MR. CONSOLDANE: You may have used
13 it in Getsy, but you didn't use it in Foster or
14 Burrows. I kept you from doing it. That is two
15 against one.

16 MR. WATKINS: We're going to bring
17 the instructions tomorrow and show you. We have
18 them over there.

19 MR. CONSOLDANE: The ones that you
20 weren't allowed to use?

21 MR. WATKINS: I am bringing the
22 instructions of the Court.

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1 MR. MORROW: What was the other case
2 you were referring to?

3 MR. CONSOLDANE: Foster and Burrows.

4 THE COURT: Check Foster and
5 Burrows.

6 MR. WATKINS: I'll bring it. I have
7 no problem.

8 THE COURT: If it isn't, we'll
9 change it.

10 MR. WATKINS: I agree.

11 THE COURT: What is the next one?

12 MR. CONSOLDANE: Right after that
13 they say, "The aggravated murder itself is not to
14 be considered as an aggravating circumstances or to
15 determine penalty." And then they go in, "except"
16 and that is not true. There's no exception. It is
17 not supposed to be considered. The paragraph
18 should end right there.

19 MR. WATKINS: No. Not in this case.

20 THE COURT: Again, Anthony, will you
21 accept the word, if it is the same as in Burrows
22 and the other case?

1 MR. WATKINS: I think this is

2 tailored. what the price is.

3 MR. MORROW: With respect to that

4 language in which they are talking about, I would

5 suggest that in most cases that the instruction

6 that they are not to consider the aggravated murder

7 as part of the aggravating circumstances. When you

8 look at case law, under Wogenstahl. And Gumm,

9 G U M M, which I have interpreted when it is proper

10 for the Prosecuting Attorney to talk about the

11 aggravated murder itself being part of the

12 aggravating circumstances. When you have a case

13 such as this, which is the Defendant committed the

14 aggravated burglary for the purpose of committing

15 the aggravated murder. If you remember, the

16 definition --

17 MR. WATKINS: That is the felony,

18 the predicate felony is the aggravated murder and

19 the aggravated burglary.

20 THE COURT: I understand that.

21 MR. CONSOLDANE: They are boot

22 strapping.

1 MR. MORROW: In that case, it is
2 appropriate for them to consider what the crime is.
3 If you are talking about them looking into
4 aggravated burglary that is being committed. You
5 are talking about while committing. When you are
6 not talking about the aggravated murder, you can
7 talk about the underlying burglary, they did it at
8 nighttime. They broke into the house, they held
9 someone hostage. They did those kinds of things
10 which are admissible for purposes of committing the
11 aggravated burglary, in this case, case, the
12 criminal offense which led to the aggravated
13 burglary was the aggravated murder itself. And
14 that is what the evidence supports in this case,
15 that they planned to keep, he planned to break in
16 to commit the murder.

17 THE COURT: Commit the aggravating
18 circumstances along with the commission of the
19 murder.

20 MR. CONSOLDANE: That is not OJI and
21 that is not the way it is supposed to be. They are
22 trying to boot strap to boot strap. Just tacking

1 one onto the other. That is not fair. Why don't
2 they give me a level playing field?

3 MR. MORROW: I have a case --

4 THE COURT: How would you like this
5 to read at the top of the page? There are two
6 aggravating circumstances running to Count 1 which
7 are aggravated burglary--

8 MR. CONSOLDANE: Number one, there
9 was an aggravated burglary and number two, it was
10 an aggravated robbery, and then the next paragraph
11 should read the aggravated murder itself is not to
12 be considered as an aggravating circumstance, or to
13 determine the penalty. Period.

14 MR. WATKINS: That is where he's
15 wrong, in at least in argument, because there's no
16 way we can argue our case without arguing the
17 aggravating circumstances. His intent to commit an
18 aggravated murder, which is the felony and what
19 Tony is suggesting, is that we can't argue the
20 facts in this case because he happened to pick as
21 his predicate felony in the aggravated burglary, is
22 to kill the man that is the homeowner, to kill the

1 guy in his house. He didn't go in there to rob
2 him. He didn't go in there to burn the house. He
3 went in there with the specific intent to take his
4 life, the intent to take his life, and there's one
5 case, State vs. Bonnell, where we have the
6 aggravated burglary and where the felony element on
7 the aggravated burglary was a premeditated murder
8 of the person in the home.

9 THE COURT: I am going to let this
10 stand as it is unless, Anthony, you can show me
11 that this is improper. The best way to show it has
12 never been given in other cases.

13 MR. CONSOLDANE: It has never been
14 given in any of the other cases. It is not in OJI.

15 THE COURT: This is nothing but,
16 although it is under the prior calculation and
17 design, it is still just a felony murder doctrine,
18 right?

19 MR. WATKINS: We have selected the
20 prior calculation and design.

21 THE COURT: I understand that. But
22 the specifications only have meaning if they refer

1 back to the aggravated murder. That is what Tony,
2 you have been arguing about all along through this.
3 I have been overruling you. You are saying that it
4 is just an aggravated murder, it is not an
5 aggravated murder with specifications.

6 MR. CONSOLDANE: Right.

7 THE COURT: I'm saying that the
8 State has convinced me that it is proper with the
9 prior calculation and design, this fellow went into
10 the house, committed a burglary in going in,
11 committed a robbery later. Those become
12 specifications attached to the aggravated murder.
13 I know you disagree with that, but that is what
14 this entire case --

15 MR. CONSOLDANE: I disagree with
16 that. I understand that there are specifications
17 and they are specifications in themselves. They
18 are not to be -- they can't now, they boot strap
19 the burglary, which I think is a clear boot strap.
20 Now they want to turn it around and they want to
21 bring in the burglary and boot strap the murder to
22 the burglary. You are not supposed to be able to

1 talk about the aggravated murder in itself. It is
2 only the two aggravated circumstances, robbery and
3 burglary. And now, they want to boot strap it and
4 bring it in and talk about the murder. You can't
5 do that. The legislature was clear about that. We
6 have never done it in any other case. We have had
7 on Burrows, they went in and committed the robbery.
8 We had Foster, was a rape. They never brought
9 those things in with the murder itself.

10 THE COURT: Will you go with the
11 wording in those cases?

12 MR. WATKINS: This case may be taken
13 with you and read it.

14 MR. MORROW: You are not going to
15 find this language in those cases, because those
16 cases didn't involve prior calculation and design.
17 That is the difference. In this case, there's
18 proof of prior calculation and design and proof
19 that the purpose for the aggravated burglary was to
20 commit the murder. That is why they broke into the
21 house was to kill Mr. Fingerhut. They didn't break
22 into the house to steal from him. They didn't

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1 break into the house to hold him hostage or rape
2 him. They broke in to kill him.

3 MR. WATKINS: Jim Lewis and we
4 argued this, and Tony agreed, that in the first
5 phase, it said intent to commit any criminal
6 offense. They said we want what you committed and
7 that was in the charge that the intent was to
8 commit aggravated murder and or aggravated robbery
9 in the penalty phase charge. To be consistent that
10 is what we have to be able to argue, the elements
11 of what the penalty phase charge was.

12 MR. CONSOLDANE: It said commit a
13 crime.

14 MR. WATKINS: Jim and Tony wanted --
15 they wanted that and the Court gave it.

16 MR. CONSOLDANE: It said commit a
17 crime.

18 MR. WATKINS: Get the charge. You
19 can look at it.

20 THE COURT: I don't want to try this
21 case over again. If you are so dead set and they
22 are so dead wrong, then at least, if they come back

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1 with a death penalty, you are going to get knocked
2 down to something less. I don't know what you are
3 complaining about.

4 MR. CONSOLDANE: I don't know why I
5 can't get a fair deal on the instructions. We
6 haven't had one ruling go our way yet and you ask
7 him --

8 THE COURT: You have had several
9 rulings go your way.

10 MR. CONSOLDANE: You ask him is it
11 in other instructions. No, it is not in Foster,
12 Burrows. What about Getsy? That was premeditated.
13 It wasn't in there either.

14 MR. WATKINS: Getsy is a good case
15 to follow, but there were multiple people in that
16 one. All I'll request for the record is that, and
17 Mary Ann, whoever did it, if you get the record,
18 dealing with the original penalty phase
19 instruction, I know that you are going to find in
20 the record an objection. It was by Attorney Lewis,
21 that this instruction, any crime is not any crime,
22 you have to put what he went in there for and this

1 Court ruled on behalf of the Defense and put
2 aggravated murder and aggravated robbery. That was
3 in the instruction per the Defense's request and
4 that record is going to speak for itself.

5 MR. CONSOLDANE: Jim asked for it,
6 but he was on drugs when he asked for it.

7 THE COURT: You know the argument is
8 here. Prepare that accordingly and we'll go over
9 it in the morning. I'm not spending much time on
10 argument in the morning.

11 MR. CONSOLDANE: Why doesn't he take
12 it out now? It has never been in any other charge.
13 Why do they get to stick it in here now?

14 THE COURT: I keep getting the
15 feeling you think I'm just going with the
16 Prosecution. It sounds to me like this is a proper
17 charge. They say that the Defendant or the Jury is
18 not to take into consideration a murder for any
19 purpose, but the specifications are only
20 specifications, because they are committed with the
21 intent to the prior calculation and design of
22 committing the murder.

1 MR. CONSOLDANE: That is just it.
2 Prior calculation and design does not get you to
3 the death penalty. The burglary and robbery do.

4 MR. WATKINS: And you go into a
5 house to commit the felony of prior calculation and
6 design, murder is the felony. That is the Bonnell
7 case.

8 MR. CONSOLDANE: Now you are talking
9 out of the other side of your mouth. When you say
10 prior calculation and design, it doesn't get you
11 there.

12 MR. WATKINS: We have researched
13 this and there's plenty of case law that deal with
14 that.

15 THE COURT: You are saying, Tony,
16 that there's no way that this could be a death
17 penalty case. Is that what you are saying?

18 MR. CONSOLDANE: It shouldn't be,
19 but it is.

20 THE COURT: If you're right and they
21 are boot strapping it, to coin a new phrase, then
22 there's no way this can be an aggravated murder

1 with the death penalty.

2 was the principal MR. WATKINS: That is what they
3 argued to the Jury and the Jury rejected it and
4 that is not the law. Bonnell is dealing with the
5 same thing. If you planned to kill somebody in
6 their home, you are not going to have a death
7 penalty offense? But if you go in there and steal
8 five cents off a chair, it's a death penalty
9 offense. I'm sorry, that is not the law.

10 MR. CONSOLDANE: I don't know why
11 they got to change it. We have never had this
12 instruction on any other death penalty case, I have
13 been on.

14 MR. WATKINS: You have never had one
15 like this.

16 THE COURT: I'm not convinced they
17 have changed anything.

18 MR. CONSOLDANE: They have.

19 THE COURT: You show me. Bring them
20 in the morning.

21 (Off the record)

22 MR. CONSOLDANE: According to

1 section 2929.04, subsection A-7. It reads,
2 "Neither the offender was the principal offender in
3 the commission of the aggravated murder, or if not
4 the principal offender, committed the aggravated
5 murder with prior calculation and design." You are
6 alleging he is, he shouldn't have both in there.
7 He was alleging that he's the principal offender,
8 then you leave out the other section of the prior
9 calculation and design.

10 MR. WRIGHT: Point is this, I guess.
11 The, "or if not the principal offender committed
12 the aggravated murder with prior calculation and
13 design," is a generally true and correct statement
14 of law with no application whatsoever to this case.
15 There's no evidence that he was anything but the
16 principal offender. Therefore, the remainder of
17 that, with the or, should be negated from the Jury
18 instructions.

19 MR. WATKINS: We don't have a
20 problem taking that out. I know there's case law.
21 Biros, I went through that. That part of the
22 specification, I don't think there's a problem

1 taking that out. They didn't object to the other
2 phase. It can go either way. The purpose of that
3 section is, if you have an accomplice, to get the
4 death penalty such as John Santine, you had to show
5 prior calculation and design. Biros we use the
6 same language and the Supreme Court of Ohio says
7 the Jury can get both, but there's no defense here
8 that the State didn't prove prior calculation and
9 design in Biros, because the only evidence was he
10 was the principal offender. We didn't show prior
11 calculation and design. We showed intent. This
12 part of it is not a problem.

13 (Court in recess at 4:40 p.m.)

14
15
16 Friday, November 15, 2002:

17 In Open Court at 10:15 A.M.:

18 THE COURT: Good morning, folks.

19 You are now going to listen to the arguments of
20 counsel in regard to the evidence that you have
21 heard yesterday. The State ready to proceed?

22 MR. WATKINS: Yes.

1 THE COURT: The Defense?

2 MR. CONSOLDANE: Yes.

3 THE COURT: You may begin.

4 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
5 OF HEARING)

6 THE COURT: Mr. Watkins, you wish to
7 proceed?

8 MR. WATKINS: We'll waive our
9 opening remarks.

10 THE COURT: Defense?

11 CLOSING ARGUMENT BY MR. CONSOLDANE:

12 MR. CONSOLDANE: Mr. Wright,
13 Mr. Jackson, Mr. Watkins, Mr. Monroe. Good
14 morning, ladies and gentlemen. It has been a long
15 trial. I am getting towards the end, getting a
16 little hoarse towards the end. I hope I can
17 continue. As you notice, I have already lost my
18 co-counsel and Mr. Wright has stepped in to help.
19 I would like to take this time, because it will be
20 the last chance I'll get to talk to you to tell you
21 how much I appreciate your attention and also would
22 like to ask you if I have done anything that has

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1 offended you, I ask for your forgiveness and not to
2 hold it against Nathaniel. As you know, I usually
3 don't talk very long. If I am 15, 20 minutes, then
4 that is going to be about it. Kind of would like
5 to just go through some of the witnesses that I
6 presented yesterday, and the reason for these
7 witnesses are to show you that Nathaniel is a human
8 and he has a family like everyone else, and you saw
9 Ray, his stepfather, and seemed like a very nice
10 gentleman. It is just a shame that he didn't get
11 to meet Nathaniel until he was 15. I think that if
12 he had gotten into his life four or five years
13 earlier, that we all wouldn't be here today. But,
14 we are and that is just to look back, and Taushia,
15 his sister, you see that she said he was very good
16 around her children. Somebody that is that evil,
17 can't be good around children. Children are
18 usually very good judges of character. And
19 Pauline, his mother, tried to get him help, just
20 wasn't able to do it. He had that attention
21 deficit problem, AD/HD and he should have gotten
22 probably on Ritalin when he was in the first or

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1 second grade. That might have solved it. There's
2 a lot of pros and cons against the Ritalin, but at
3 least he should have gotten some more structured
4 help. When he did get the structured help, he did
5 seem to progress. And finally, that cute little
6 girl, Shaylese, anybody that would have a daughter
7 like that, can't be too bad. He would like a
8 chance to see her grow up, even if it be from
9 prison.
10 And finally, Dr. McPherson. Dr.
11 McPherson and I have worked together for about ten
12 years now and she's a very fine, competent lady. I
13 know that Mr. Watkins asked her whether or not she
14 believed in the death penalty, and that really has
15 no bearing. What her private beliefs are is of no
16 concern, but she does -- very competent
17 psychologist and very good at what she's done.
18 Matter of fact, you heard that she was on the
19 Board, the Review Board that granted the license.
20 I believe she even signed Mr. Wrenn's license who
21 is sitting back there, that she's been very well
22 respected in the State of Ohio.

1 Now, she did talk about the AD/HD, and
2 probably figured that it was evident even when he
3 was in the first grade, got into trouble. Matter
4 of fact, by the third grade, he was even suspended.
5 He did get help when they put him in that
6 structured center, and he did quite well, but as
7 soon as he did well, they figured they could put
8 him back in the mainstream classroom where he
9 turned around and he failed again. With him, he
10 had a double whammy, so to speak with this, is that
11 he had a physical impairment, and also there was
12 environmental impairment to live in a neighborhood
13 where guns and drugs are common, is just not
14 conducive to have somebody grow up with the right
15 set of values.

16 That brings us to another thing, which is
17 kind of interesting, and you are going to get her
18 report. This report here is going to go back to
19 the Jury, it is not real long. It is about seven
20 pages. And in there, he had an IQ, when he was in
21 high school he was tested twice, right around 70.
22 And since then, she has retested him, and he's

1 about 84. And that is kind of unheard of to jump
2 that many points, but it just showed how he was
3 able to actually excel in a structured environment
4 as long as there's someone that can tell him where
5 he has to go and what he has to do. He seems to
6 come along all right, which kind of shows that he
7 will actually be able to survive quite well in
8 prison. He's done well before in prison.
9 That brings us to another thing that Dr.
10 McPherson was talking about. On page three of the
11 report, she talks about the relationship that
12 Nathaniel had with Donna Roberts, and that she
13 offered him the stability, she offered him a home,
14 even though she was 57 and he was 30, she was still
15 able to offer him what he needed. And also that if
16 you look at page 7, that his vulnerability to be
17 influenced by Donna was extremely high. All in
18 all, if you take the report like I told you before
19 and just look it over, you will see a lot of
20 reasons why you shouldn't impose the death penalty
21 on Nathaniel.
22 And that brings me to a couple of things

1 I want to mention about the instructions. These
2 are the instructions that the Judge is going to
3 read to you, and in there he's going to tell you
4 two things. One, that the murder itself is not an
5 aggravated circumstance. The aggravated
6 circumstances are the burglary and the robbery.
7 That is what you have to weigh against the
8 mitigating factors. And also that another
9 instruction that the Judge is going to tell you
10 that if you all can't agree on the death penalty,
11 then you are to move onto one of the life
12 penalties. It will take all 12 of you to decide
13 whether Nathaniel is to get the death penalty or if
14 you can't agree, there's three different life
15 options, which you can move onto. I don't know if
16 many of you have read the Merchant of Venice
17 written by Shakespeare. I know I read it back in
18 high school. I don't know if they require you to
19 read that any longer, but if you recall, that is
20 when Shylock demanded payment of a pound of flesh,
21 and he could have gotten any type of flesh that he
22 wanted, he demanded his heart. And they said,

1 well, take the heart if you don't disturb the rest
2 of me. In this particular case, I think that a
3 certain amount of punishment must be imposed for
4 what Nathaniel did, but don't take his heart.
5 Don't kill him. From that same play, there was a
6 little quote about mercy and it said, "The quality
7 of mercy is not strained. It droppeth as the
8 gentle rain from heaven upon the place beneath."
9 And mercy is twice blessed. "It blesseth him that
10 gives and him that takes." Please spare his life.
11 Thank you.

12 CLOSING ARGUMENT BY MR. WATKINS:

13 MR. WATKINS: Mr. Consoldane, Mr.
14 Wright, Mr. Monroe, Your Honor. Ladies and
15 gentlemen, I know it has been a long road. I know
16 that this Jury has put a lot of time and effort. I
17 know His Honor has done a tremendous job in keeping
18 balance and instructing the Jury that this is a
19 case where the Jury has to have an open mind to
20 decide the case, not on sympathy or bias or
21 prejudice, but on the law and the evidence.

22 The aggravating circumstances versus the

1 mitigating factors is not an easy decision. I
2 wouldn't want to be in your shoes. I have done
3 this before. I hope I don't do it again, but
4 unfortunately, Chuck and I may be doing this again.
5 I haven't won and gotten a recommendation on every
6 case. I don't expect to win every case. But I
7 expect that the jurors are going to do what they
8 told me they are going to do. And the most
9 important thing, I would never ever criticize a
10 Jury. I believe it is the bastion of our
11 protections of freedom because in the balance is
12 our civilization of doing what is right, not what
13 is convenient. Whatever you do, I respect your
14 decision.

15 All of you have to ask one basic
16 question. When I get up tomorrow or the next day,
17 whenever it is, can I look in the mirror and say I
18 did the right thing. As long as you can do that,
19 that is all I can ask. I obviously have strong
20 feelings. I'm not going to apologize. That is my
21 job. That is Chuck's job to present the evidence
22 to you what we believe is right. You will decide

1 what is right.

2 Now, it is important that you consider
3 and I know this Jury knows the importance, this
4 Jury was out 15 hours on one occasion, and I think
5 it is somewhat important and Mrs. McPherson or Dr.
6 McPherson is a very nice person, and I surely would
7 tell Mr. Consoldane that I'm not criticizing her
8 because of her position on the death penalty. She
9 has never testified for a Prosecutor, but you
10 remember the instructions dealing with witnesses.
11 Some may have a bias and we're entitled to bring
12 that out, simply that there is a bias, however, I
13 think when you read her report, which is an
14 exhibit, along with the records, there's some
15 partial records that were made State's Exhibits
16 dealing with the school activity of the Defendant,
17 that you will find from the evidence and the law
18 gives, that there's no mitigating evidence of
19 significant value from her testimony.

20 Just before I go into detail on that, I
21 would just mention that if you can recall, one of
22 the statutory mitigating factors was whether or not

1 a person has a mental disease or defect that
2 substantially impacts behavior. That is where the
3 law requires you to give weight to that. This lady
4 testified that there was no mental disease or
5 defect, that mitigating factor does not exist in
6 this case. However, his Honor will instruct you --

7 MR. CONSOLDANE: I'm going to
8 object. I do not present.

9 (At Side Bar with reporter present.)

10 MR. CONSOLDANE: It has long been
11 established by the case law, that the Prosecutor
12 cannot comment on what mitigating factors I did not
13 present. He can only discuss on what mitigation
14 that I can. He can't say that I didn't bring up
15 this or didn't bring up that. That is improper
16 argument and I would object to that.

17 MR. WATKINS: I'm not going to go
18 through the mitigating factors at all. This
19 particular factor was covered in the testimony of
20 the psychologist and I directly asked her and she's
21 saying that this factor exists and she said no.
22 What I was about to say was however, you can

1 consider history, background, and character, and
2 the catch-all phrase that you can consider what she
3 says is mitigating, if you let me continue.

4 MR. CONSOLDANE: It is still
5 improper to mention something that I didn't prove.

6 It is like showing -- it is an improper
7 thing. He only can talk about the quality of the
8 evidence I did present, not what I did not present.
9 I told you at the start, I was not going to bring
10 in anything about mental defect. I put that on the
11 record before we started. It was an improper
12 question that you asked her to begin with. I
13 didn't have a chance to object. I knew what the
14 answer would be, but it still cannot be brought up
15 in final argument and I would request that the Jury
16 be instructed that they have to, that whatever
17 mitigating that I didn't bring up.

18 THE COURT: His argument is to
19 counter what argument she gave on this. Let me see
20 what I can say. If I don't say it right, come back
21 up.

22 (End of Side Bar discussion.)

1 THE COURT: Ladies and gentlemen,
2 there's been an objection raised, and I don't know
3 that Mr. Watkins had gotten to the point where it
4 might be a perfectly valid objection or not, but
5 let me state this to you to correct any
6 misunderstanding. The State at this point, is
7 limited to the bounds of rebutting any evidence or
8 argument that has been put on in the mitigation
9 phase of the trial. I don't think that from the
10 question which was only a partial question, had
11 Mr. Watkins continued along the line that he might
12 have, then he would be getting outside the
13 boundaries of proper argument. Mr. Watkins, I
14 would ask you to rephrase your question.

15 MR. WATKINS: What I said was not
16 wrong.

17 THE COURT: Anything you said up to
18 this point, I don't think at all was improper, but
19 please continue.

20 MR. WATKINS: Thank you. I was
21 going to continue that his Honor will give you an
22 instruction, it is very clear, you can consider

1 what Mrs. McPherson, Dr. McPherson said as
2 mitigating. I was simply pointing out there was no
3 mental defect or disease or mental retardation.
4 The law allows, and for you to decide what is
5 mitigating, I would not ever suggest you couldn't.
6 As you know, this is my opinion. This is the way I
7 view the law. You decide the law as given by the
8 Judge and you decide the facts. Now, when you go
9 back and listen to the Judge -- after you listen to
10 the Judge, we have under the law, two aggravating
11 circumstances that you found the Defendant guilty
12 of beyond a reasonable doubt. Aggravated burglary,
13 aggravated robbery. One is all that is necessary,
14 if the quality of the evidence outweighs the
15 mitigating factor or factors you find beyond a
16 reasonable doubt, then it is your duty to recommend
17 the death penalty. I'm sure you are aware of that.
18 In this particular case, the aggravated murder that
19 is involved, as you have found the Defendant guilty
20 of, he committed an aggravated murder with prior
21 calculation and design. That is a fact. That is
22 your conclusion. It is also your conclusion that

1 this Defendant, when he trespassed in the house of
2 the victim, the home where he lived, it was his
3 specific intent to kill the victim, to commit an
4 aggravated murder against a homeowner, which was
5 planned in prison where Dr. McPherson said to you
6 that he had made a good adjustment. His behavior,
7 the words you read, voiced, the voice that you
8 heard of the Defendant, established beyond a
9 reasonable doubt he committed the worst aggravated
10 burglary you can commit. He planned for months,
11 the death of the victim in his home, and he did it.
12 Aggravated burglary, any criminal offense you can
13 commit in a house, you go into a house and steal
14 something and then intentionally kill him. But
15 what crime did he enter that home to commit? That
16 is for you to decide, what weight and quality you
17 give the crime that you found the Defendant is
18 guilty of.

19 I submit to you, it can't get any worse
20 than being in prison and planning the execution of
21 a homeowner who just comes home. It is not a case
22 where you have somebody that goes in and breaks in

1 to make a few dollars, and then a homeowner comes
2 home and impulsively shoots someone. It is not
3 even a case where you break in to rape the woman
4 that lives inside, and leave her alive. This is a
5 cold blooded psychopathic killing that takes place
6 in its planning stage in prison.

7 MR. CONSOLDANE: I object to him
8 saying psychopathic killer. There's no evidence to
9 that.

10 THE COURT: I would instruct the
11 Jury to disregard that. I'll sustain that.

12 MR. WATKINS: The planning takes
13 place in prison. That is what I believe the
14 evidence in this case shows, as to that aggravating
15 circumstance. It is the worst form. The other is
16 that after he kills the homeowner --

17 MR. CONSOLDANE: I object. He's not
18 the homeowner. He resided in the home.

19 THE COURT: Overrule the objection.
20 The Jury is well aware of the arguments. That is
21 up for them to decide.

22 MR. WATKINS: After he kills this

1 man in his home, he takes his vehicle, that is the
2 second aggravating circumstance. So you have two
3 aggravating circumstances. I am suggesting to you
4 that the quality of the evidence as to Count 1,
5 aggravated burglary is strongest of aggravating
6 circumstances, is the evidence, and the second one
7 is also strong, and independent, but you have two
8 aggravating circumstances. You will have the
9 Exhibits that are relevant to this stage with you,
10 if you need to have them.

11 I would briefly like to go through and
12 comment on the mitigation evidence. Obviously I
13 had briefly gone through the aggravating
14 circumstances. Raymond Dickerson. As I see his
15 testimony, this man, the stepfather, testified that
16 he had not seen the Defendant since he was 17 years
17 of age, when he left home. He had not seen him for
18 13 years almost. What weight, what knowledge does
19 he have to add to this case? I think very little.
20 And I think it is important to recognize that his
21 sister and mother talk about this neighborhood and
22 this home is not that rough, not that bad of a

1 neighborhood, and he's telling us it is extremely
2 violent. Well, we know after he left the
3 neighborhood, his adult history of going in and out
4 of prison is prevalent and not being at home is
5 prevalent, and we also know that his sister, who
6 testified, Taushia, who is a nice young woman, not
7 had any problem, came up in the same household,
8 talked of her brother as being smart, being
9 somewhat artistic, who knew right from wrong, went
10 to church, and appeared to her to be a very nice
11 person. In my opinion, that is not mitigating
12 because it shows that he had what a lot of people
13 didn't have. He had a hard working mother. He had
14 a loving sister, and he was given an opportunity to
15 go on in life like his sister did, but as even
16 Mrs. McPherson said, he made choices and he
17 repeatedly made choices and made mistakes and
18 repeatedly manipulated and the chameleon that he
19 is, he adapts his personality to manipulate and
20 control and use people, and he did it time and time
21 again. There was the time he was in prison, the
22 time he was planning the death of the victim, he

1 said that he felt that this is going to change his
2 life, that he had remorse. He says what is
3 necessary, but inside his being, he's an
4 anti-social personality who does not have the
5 conscience, who has a pattern.

6 MR. CONSOLDANE: I object.

7 MR. WATKINS: I think I can comment
8 on the evidence.

9 MR. CONSOLDANE: Not having a
10 conscience?

11 MR. WATKINS: That is an anti-social
12 personality.

13 THE COURT: This is argument. The
14 Jury can accept Mr. Watkins' view or not. I think
15 it is proper argument. Overruled.

16 MR. WATKINS: So you have this
17 person where you have to consider according to the
18 Judge, his history, character and background. I am
19 only trying to point out this history, character
20 and background is not mitigating. It is not worth
21 very much. He doesn't have any hospitalization for
22 mental illness. He doesn't have any evidence of

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1 neurological problems. He has behavior problems,
2 he has had them from the beginning and has gone
3 through many interventions. And has escalated his
4 conduct. His daughter, and the mother testified,
5 and it is too bad. It seemed like the mother is
6 doing a good job. You saw the letters. You heard
7 the tapes. You heard the evidence. Was this a man
8 that was concerned about his children, who provided
9 for his children? Was he talking about getting out
10 of prison to see his seven year old daughter? When
11 he got out of the prison did he go see his seven
12 year old daughter? He went to a motel with Donna.
13 If he would have done what he's supposed to have
14 done, he would not have killed. Sometimes you get
15 caught and sometimes the evidence is overwhelming,
16 and sometimes you are just darn guilty and
17 sometimes there's no mitigation. That is the way
18 it is. I don't make and choose the evidence. The
19 witnesses do. The mother testified, Pauline, who
20 works hard, not a rough neighborhood. Put her on
21 trial now because it doesn't fit into the Defense's
22 position to portray this guy. He had no choice, he

1 was brought up in this culture of violence. He did
2 have choices. In fact, he's a very smart man from
3 his letters, and that is what makes it so awful.
4 He could have done things differently. But he
5 doesn't care. He made an unsworn statement.
6 Wasn't subject to cross examination as other
7 witnesses. He said he was sorry. He was sorry.
8 That is not the way the evidence shows. We see a
9 man that commits aggravated murder, and what is he
10 doing afterwards? He's going to a motel. And we
11 speak about loyalty. When we talk about loyalty
12 that Dr. McPherson said, he's going there with a
13 bloody hand and bringing a woman in to have sex
14 after murdering somebody. And what is it they say,
15 he's having a party. No conscience. And when you
16 read the letters, and when you listen to the tapes,
17 "I'm going to shoot the guy in the F'ing head." It
18 is mandatory. "I made up my mind, I'm going to do
19 it." Repeatedly. He's pushing this plan. Even
20 the last thing that you hear from, there's one
21 thing you have got to do for me. December 8, let
22 me in the house. The gloves, the handcuffs, the

1 whole plan of action here. The reality of not
2 being concerned about taking human life, to make
3 this decision and in such a cold blooded and
4 planned way, for the sake of Donna, or what I say
5 for the sake of a lot of money, he kills.

6 In the report, and please read the
7 report, please read the records where he threatened
8 to kill a teacher. The hatred that he expresses
9 may not be here now, but look at his practice and
10 that is what Dr. McPherson said. I am looking at
11 his practice in his escalation. Whether or not
12 life imprisonment is a mitigating factor, that is
13 for you to decide. Whatever you find from his
14 history, character, background or anything else, it
15 is for you to decide.

16 I submit there's virtually no mitigation
17 in this particular case, but one thing I want to
18 hit upon in my closing, because I'm not going to be
19 here much longer, you have been here long enough
20 and I know you want to go to your daily lives and
21 finish this in the way you have done this
22 throughout the trial, what you think is right, and

1 what you believe is the just decision, but we have
2 evidence that, well, he made an adjustment in
3 prison. That gives him life because he's okay in
4 prison. That was testified to by the defense. He
5 didn't make an adjustment when he's planning to
6 murder in prison, and every time he's been able to
7 manipulate the system and get out early, he's in
8 there for life and whether it is out of loyalty or
9 whatever, if it is a guard or a fellow prisoner,
10 he's the kind of person that if he makes up his
11 mind and thinks about it, he will do it. He did
12 it. And that is why Dr. McPherson's testimony is
13 that this is a person that is good in prison, that
14 we can give a life sentence to as a mitigating
15 factor and I don't think it is mitigating, but they
16 brought it up, I said that is not true in this
17 case. This is not a person that made a split
18 second decision to kill. This is as planned as it
19 gets. But most importantly, the quality of the
20 State's evidence is there. There's no lingering
21 doubt. There's no residual doubt. It is there.
22 His words, his voice, his actions. The reason if

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1 he's on death row, the reason for the
2 recommendation is not anybody's fault but his. He
3 puts himself there. Thank you, ladies and
4 gentlemen.

5 THE COURT: Thank you. Ladies and
6 gentlemen, let's take a ten minute break. You are
7 not to discuss anything or form any opinion until
8 you return.

9 (Court in recess at 10:55 A.M.)

10 (Proffer into the record.)

11 MR. CONSOLDANE: During the closing
12 arguments and I objected enough, I didn't want to
13 object any more, is that Mr. Watkins made a
14 statement that Nathaniel Jackson was a manipulator
15 and he could manipulate himself to get out of
16 prison early. With your instructions, I would like
17 to also tell the Jury that no matter what
18 manipulation, the sentence is life with 30 years.
19 It is 30 actual years or life without parole. That
20 was an improper comment for him to make to the
21 Jury, because he cannot manipulate himself. I know
22 he's allowed to argue, but I would request the

1 Court to either grant a mistrial or curative
2 instruction.

3 MR. WATKINS: The testimony in the
4 context of my comment on manipulation deals with
5 Dr. McPherson of my cross examination. I went
6 through DSM-III that she agreed that he
7 manipulates. He uses the system. There's clear
8 evidence that I am permitted to argue the evidence
9 in this case. And he said he was sorry, and he
10 wasn't, because he's in prison planning a man's
11 death. That is appropriate conduct from the
12 evidence.

13 MR. CONSOLDANE: I don't disagree
14 that he can say he manipulated. Only when he added
15 that he can manipulate his way out of prison
16 earlier. That is improper.

17 THE COURT: He's referring to the
18 past.

19 MR. WATKINS: I'm talking about the
20 past.

21 MR. CONSOLDANE: I'm saying that
22 gives the idea to the Jury that if they give him a

1 life sentence, that he will be able to manipulate
2 his way out. I would like you to clear that up
3 with the Jury.

4 MR. WATKINS: I did not say that.

5 THE COURT: The Court does not
6 believe that that rises to the position where a
7 mistrial should be granted, and I did not hear any
8 reference to the future in the argument.

9 MR. WATKINS: It was not.

10 THE COURT: It was to the past.

11 MR. CONSOLDANE: He said he would be
12 able to manipulate his way out of prison.

13 MR. WATKINS: I did not say that.

14 THE COURT: This Jury has been
15 repeatedly told that once a person is given life
16 without chance of parole, that there's no
17 possibility of parole. Unless they will disregard
18 what they have been told in that regard, to think
19 that if they accept the fact that the Defendant is
20 manipulative that he would somehow be able to
21 change the law.

22 MR. CONSOLDANE: I would request the

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1 Court instruct the Jury on that again in lieu of
2 what he said.

3 THE COURT: I'm going to, no -- no,
4 I'm not going to in the Jury instructions tell them
5 anything more than I did before about life without
6 chance of parole. Let me ask the Prosecution and I
7 would not think you would have any opinion to my
8 telling them that, ladies and gentlemen, life in
9 prison meant without chance of parole, means
10 without any chance of ever getting out of prison
11 here.

12 MR. WATKINS: That has already been
13 done. I don't think that the Court should
14 emphasize one opinion over the other.

15 THE COURT: That is a danger. I
16 agree with that.

17 MR. WATKINS: The instructions are
18 okay.

19 THE COURT: The Jury can take it
20 that that is what the Court wishes them to do, and
21 that is not good. For the record, your objection
22 is noted. I am overruling your motion for mistrial

1 and I'll go with the instructions that we have
2 agreed upon.

3 MR. CONSOLDANE: You won't give the
4 instruction that I requested?

5 THE COURT: I'm not going to point
6 out one instruction over another, because I am
7 afraid that the Jury might think it is a hidden
8 signal from the Court. We try to avoid that, as
9 you know. I also want to call, to put on the
10 record, to the attention of the record, that Mr.
11 Lewis is still unable to be with us due to his
12 medical problems.

13 MR. CONSOLDANE: That is correct,
14 and Your Honor, we do not want to delay this. And
15 Nathaniel, is that correct that you wanted to
16 proceed?

17 THE DEFENDANT: Yes.

18 MR. CONSOLDANE: You are satisfied
19 with Mr. Wright's help?

20 THE DEFENDANT: Yes.

21 THE COURT: Mr. Wright is merely
22 doing this as an accommodation, pro bono.

1 MR. CONSOLDANE: I want to say one
2 other thing that Mr. Wright has offered his
3 services pro bono when I requested of him. He's
4 not appointed.

5 MR. WATKINS: I think further the
6 record is clear that the State, at the time it
7 heard that Mr. Lewis was ill, that we had no
8 problem. In fact, we said if they wanted a
9 continuance until next week the State's position
10 was that would be no problem. However,
11 Mr. Consoldane is lead counsel and he made that
12 decision, waived any continuance, so we feel very
13 comfortable with the decision in this case based on
14 all of the things that we have done to protect the
15 Defendant's rights.

16 THE COURT: The Court had indicated,
17 I believe as soon as the problem became apparent,
18 that that was a possibility of continuing the case,
19 but there's another factor that entered into this,
20 that none of you mentioned, I'm sure crossed your
21 mind, and that is that we have had this Jury,
22 several of them are waitresses, they lost money on

1 weekends, and I have ordered them not to go to work
2 and to continue this thing. That was another
3 factor that you are starting to cause undue
4 hardship on the Jury.

5 MR. CONSOLDANE: Besides that, for
6 the last ten years on the cases that Mr. Lewis and
7 I have tried together, I pretty much have handled
8 most of mitigation. I had the witnesses here. I
9 didn't want to have them come back.

10 THE COURT: That is the reason you
11 felt there was no problem with you proceeding.
12 Anything else?

13 MR. WATKINS: Other than the
14 Exhibits, that we would move that the Jury have the
15 Exhibits in the Jury room.

16 THE COURT: The Jury will have the
17 Exhibits available.

18 MR. CONSOLDANE: Both Exhibit P on
19 my part and also the Prosecutor's Exhibits. I
20 would renew all of my objections to those Exhibits
21 that I made during the trial. I'm not waiving
22 those at this time, and still would restate them

1 now as if they were originally made.

2 THE COURT: Court's rulings will be
3 as they were made at the time you argued each
4 point. There were some Jury instructions made this
5 morning. The one issue on page eight, where the
6 Defense had requested that the instruction be
7 changed to read as it did in the Shaffer case and
8 the Burrows case. And the Court agreed that that
9 was appropriate over the objection of the State.
10 The question still is, is there any other objection
11 to the instructions?

12 MR. CONSOLDANE: I object to the
13 mentioning of the murder as part of one of the
14 mitigating factors. I have been arguing that
15 constantly.

16 MR. WATKINS: Not mitigating. One
17 of the aggravating.

18 MR. CONSOLDANE: One of the
19 aggravating circumstances.

20 THE COURT: I think we have been
21 through that point on the record before. The Court
22 will note your objection.

1 (Resumed in Open Court with Jury at 11:15 a.m.)

2 JURY INSTRUCTIONS:

3 THE COURT: Ladies and gentlemen,
4 first of all, on behalf of everybody concerned
5 here, I would like to take this opportunity to
6 thank you all for your patience, your diligence and
7 your attention. You have been a very exemplary
8 Jury. I mean that. We thank you for that. At the
9 first phase of this trial, you decided that the
10 Defendant was guilty of two counts of aggravated
11 murder, as well as two specifications of
12 aggravating circumstances that were attached to the
13 first count, and two specifications that were
14 attached to the second count. Because the acts for
15 which the Defendant stands convicted as to Count
16 One and Two, constitute only one event, he can only
17 be punished for one offense of aggravated murder of
18 Robert S. Fingerhut. As a result, the State of
19 Ohio has elected to dismiss the second count of the
20 indictment at this second phase of this trial.

21 This means that the Defendant stands
22 convicted for penalty purposes of Count One of the

1 indictment, together with the two specifications to
2 Count One only.

3 Now, you are instructed to disregard the
4 Second Count of aggravated murder, and its
5 specifications and not consider them for any
6 purpose.

7 In this phase of the proceedings, the
8 Defendant has presented evidence and arguments of
9 counsel relative to mitigating factors. That is,
10 as to reasons why the Defense argues that one of
11 the life sentences should be imposed instead of the
12 death penalty. The State has offered arguments
13 that the evidence of the aggravating circumstances
14 outweighs, by proof beyond a reasonable doubt, the
15 mitigating factors, and the State seeks the death
16 penalty rather than one of the life sentences.
17 Your duty now is to determine if the aggravating
18 circumstances outweigh, by proof beyond a
19 reasonable doubt, the mitigating factors offered by
20 the Defendant and based upon your findings, you
21 must make a determination on the sentence to be
22 imposed for the aggravated murder conviction.

1 It is now my duty to instruct you in the
2 law which applies to these proceedings. Again, the
3 Court and the Jury have separate functions. You
4 decide the disputed facts and the Court provides
5 the instructions of law. It is your sworn duty to
6 accept these instructions and to apply the law, as
7 it is given to you. You are not permitted to
8 change the law, nor to apply your own conception of
9 what you think the law should be, nor are you to
10 disregard the law.

11 The State has the burden of proving, by
12 proof beyond a reasonable doubt, that one or all of
13 the aggravating circumstances, in the first and or
14 second -- let me start that over. Gentlemen, that
15 was not left out. The State has the burden of
16 proving by proof beyond a reasonable doubt that one
17 or all of the aggravating circumstances in the
18 first count of the indictment, which the Defendant
19 has been found guilty of committing, outweigh any
20 or all of the factors in mitigation.

21 Now the Defendant has no such burden of
22 proof, however, the Defendant does have the burden

1 to go forward with the evidence on mitigating
2 factors. As noted, the State has already proven in
3 the first phase of his case, that aggravating
4 circumstances exist in this case. In reaching your
5 verdict, you are instructed that you will consider
6 all of the evidence, and Exhibits which the Court
7 has admitted as relevant to the aggravating
8 circumstances in this phase of the trial, along
9 with all of the additional evidence, and Exhibits
10 which the Court has admitted as relevant to the
11 mitigating factors, offered by the Defendant.

12 Now you have heard the term "outweigh"
13 quite a bit during these proceedings. To outweigh,
14 means to weigh more than, to be more important
15 than. In that regard, it is the quality of the
16 evidence that must be given consideration by you.
17 And again, the quality of the evidence may or may
18 not be commensurate with the quality of the
19 evidence, that is, the number of witnesses, or
20 Exhibits presented.

21 Remember that reasonable doubt is
22 presented when after you have carefully considered

1 and compared all of the evidence, you cannot say
2 you are firmly convinced that the aggravating
3 circumstances outweigh the factors in mitigation.

4 Reasonable doubt is a doubt based on
5 reason and common sense. And reasonable doubt is
6 not mere possible doubt because everything relating
7 to human affairs and depending on moral evidence,
8 is open to some possible or imaginary doubt. Proof
9 beyond a reasonable doubt is proof of such a
10 character that an ordinary person would be willing
11 to rely and act upon it in the most important of
12 his or her own affairs.

13 If you are convinced that the aggravating
14 circumstances, which the Defendant was found guilty
15 of committing as set forth in Count One are
16 sufficient to outweigh by proof beyond a reasonable
17 doubt, the factors in mitigation, then the State
18 has met its burden of proof and the Jury shall
19 recommend to the Court, that the sentence of death
20 should be imposed on the Defendant.

21 If, on the other hand, you are not
22 convinced that the aggravating circumstances, which

1 the Defendant was found guilty of committing in
2 Count One are sufficient to outweigh by proof
3 beyond a reasonable doubt, then the State has not
4 met its burden of proof and the Jury shall
5 recommend the Defendant be sentenced to life
6 imprisonment without parole eligibility, or to life
7 imprisonment with parole eligibility after serving
8 30 full years, or life imprisonment, with parole
9 eligibility after serving 25 full years.

10 Now, what is and what is not evidence in
11 this proceeding? Again, the indictment is not
12 evidence. It simply informed the Defendant that he
13 was charged with two counts of aggravated murder
14 and specifications of aggravating circumstances.
15 And was the vehicle for bringing this matter to
16 Court. Again, the opening statements of the
17 attorneys, and the closing arguments, that you have
18 just heard are not evidence. The opening
19 statements and the closing arguments by the
20 attorneys are designed to assist you, but they are
21 not evidence.

22 Then what is the evidence in this

1 proceeding? Well, it is all the testimony you
2 heard in the first phase of this trial, and all of
3 the Exhibits admitted into evidence in the first
4 phase, which this Court has determined to be
5 relevant to proving any of the aggravating
6 circumstances, or mitigating factors, in which you
7 had the opportunity to examine and which you will
8 have with you again, when you deliberate in this
9 proceeding.

10 Evidence is also, all of the testimony
11 from the witnesses, who testify during this
12 proceeding and any additional Exhibits admitted in
13 this proceeding.

14 Once again, you are the sole judges of
15 the facts of this case. Also the credibility of
16 the witnesses and the weight of the evidence.
17 Again, to weigh the evidence, you must consider the
18 credibility of each witness and to do this, you
19 will apply the tests of truthfulness you apply in
20 your daily lives.

21 These tests include the appearance of
22 each witness upon the stand, the manner of

1 testifying, the reasonableness of the testimony,
2 the opportunity the witness had to hear, see or
3 know about the things, concerning which they have
4 testified, their accuracy of memory, their
5 frankness, their lack of it, their intelligence,
6 interest and bias if any, but together with all of
7 the facts and circumstances, surrounding that
8 person's testimony.

9 Applying these tests, you will assign to
10 the testimony of each witness such weight as you
11 deem proper. You are not required to believe the
12 testimony of any witness, simply because he or she
13 was under oath. You may believe or disbelieve all
14 or any part of the testimony of any witness, and it
15 is your province to determine what testimony is
16 worthy of belief, and what testimony is not worthy
17 of belief.

18 Generally a witness may not express an
19 opinion. However, one who follows a profession or
20 special line of work may express such an opinion,
21 because of his or her education, knowledge and
22 experience. Such testimony is admitted for

1 whatever assistance it may provide in helping you
2 to arrive at a just verdict.

3 As with other witnesses, upon you alone
4 rests the duty to determine what weight is to be
5 given to the testimony of the experts. In
6 determining its weight, you may take into
7 consideration, his or her skill, experience,
8 knowledge, veracity, familiarity with the facts of
9 this case, and the usual rules for testing
10 credibility and determining the weight to be given
11 to that testimony.

12 The Defendant gave an unsworn statement
13 in this matter and therefore, cross examination was
14 not permitted. It is his right, under Ohio law to
15 do so, and his statement, although not considered
16 as evidence, may be considered by you for whatever
17 purpose you may assign.

18 I repeat that the purpose of this
19 proceeding is to have you decide whether or not the
20 aggravating circumstances the Defendant was found
21 guilty of committing are sufficient by proof beyond
22 a reasonable doubt to outweigh the factors in

1 mitigation of the imposition of the sentence of

2 death.

3 What are aggravating circumstances? In

4 this particular case, the aggravating circumstances

5 are precisely set out in the specifications

6 contained in the verdict forms on these

7 specifications. There are two aggravating

8 circumstances relating to Count One. The first is,

9 that I apologize to you folks. I just need a drink

10 of water.

11 The first aggravating circumstance as

12 attached to Count One is that the Defendant

13 committed the aggravated murder, while he was

14 committing, attempting to commit or fleeing

15 immediately after committing aggravated burglary.

16 And he was the principal offender in the commission

17 of the aggravated murder.

18 The second is that the Defendant

19 committed the aggravated murder while he was

20 committing, attempting to commit or fleeing

21 immediately after committing aggravated robbery,

22 and that he was the principal offender in the

1 commission of the aggravated murder.

2 Now the aggravated murder itself is not
3 to be considered as aggravating circumstances, or
4 to determine penalty herein except as it relates to
5 specification one, to Count One, alleging that the
6 aggravated murder of Robert S. Fingerhut, was the
7 criminal offense for which the Defendant trespassed
8 in the commission of the aggravated burglary. The
9 nature and circumstances of the aggravated murder
10 are relevant only insofar as they may relate to any
11 mitigating factors alleged by the Defendant or any
12 of the aggravating circumstances for which the
13 Defendant was found guilty.

14 What are mitigating factors? Mitigating
15 factors are factors that while they do not justify
16 or excuse the crimes of aggravated murder,
17 nevertheless, if you find they exist, shall be
18 considered by you as extenuating, lessening,
19 weakening, excusing to some extent or reducing the
20 degree of the sentence. Mitigating factors are not
21 related to Nathaniel E. Jackson's culpability, but
22 rather are those factors that are relevant to the

1 issue of whether Nathaniel E. Jackson should be
2 sentenced to death.

3 Therefore, you are to weigh as mitigating
4 factors, including, but not limited to, the
5 history, character, and background of the
6 Defendant, and number two, any other factors in
7 mitigation that are relevant to the issue of
8 whether Nathaniel E. Jackson should be sentenced to
9 death.

10 Ladies and gentlemen, when you retire to
11 commence these deliberations, remember your initial
12 conduct upon entering the Jury room is a matter of
13 importance. It is not wise, I would suggest, to
14 immediately express a determination or to insist
15 upon a certain verdict because if your sense of
16 pride is aroused, you may hesitate to change your
17 position even if you later decide that you are
18 wrong.

19 You should consult with one another and
20 consider each other's views and deliberate with the
21 objective of reaching an agreement. Each of you
22 must decide this matter for yourself, but you

1 should do so only after a discussion and
2 consideration with your fellow jurors of all of the
3 evidence and the Exhibits which this Court has
4 determined to be relevant in this phase of the
5 proceeding. Do not hesitate to change an opinion,
6 if you become convinced that that opinion is wrong.
7 Just as important, you should not surrender honest
8 convictions in order to just to be congenial or in
9 order to reach a verdict solely because of the
10 opinion of the other jurors.

11 In reaching a verdict in this proceeding,
12 you must consider all of the evidence applicable to
13 the statutory aggravating circumstances, and the
14 mitigating factors admitted at both phases of this
15 trial and the arguments of counsel in this phase of
16 the trial. You must then determine whether the
17 aggravating circumstances which the Defendant,
18 Nathaniel E. Jackson was found guilty of committing
19 in the aggravated murder of Robert S. Fingerhut,
20 are sufficient by proof beyond a reasonable doubt,
21 to outweigh the mitigating factors present in this
22 case.

1 Now, again, all 12 jurors must agree on a
2 recommendation of a death sentence. If all 12
3 jurors find that the aggravating circumstances
4 which the Defendant, Nathaniel E. Jackson was found
5 guilty of committing in the death of Robert S.
6 Fingerhut, outweigh by proof beyond a reasonable
7 doubt, the mitigating factors, then you shall
8 return such a finding to the Court and as a matter
9 of law, make a recommendation that the sentence of
10 death be ordered.

11 On the other hand, if after considering
12 all of the evidence relevant to the statutory
13 aggravating circumstances, and the mitigating
14 factors admitted at the two phases of this trial
15 and the arguments of counsel, you find that the
16 State has failed to prove, by proof beyond a
17 reasonable doubt, that the aggravating
18 circumstances which the Defendant, Nathaniel E.
19 Jackson was found guilty of committing, in the
20 death of Robert S. Fingerhut, outweigh the
21 mitigating factors, or if you are unable to reach a
22 unanimous verdict, recommending the death penalty,

1 then in either of these events and as a matter of
2 law, you would have no choice but to determine
3 which of the three possible life imprisonment
4 sentences will be imposed.

5 Those three life imprisonment sentences
6 are as follows. One, that the Defendant be
7 sentenced to life imprisonment without parole
8 eligibility. Two, that the Defendant be sentenced
9 to life imprisonment with parole eligibility after
10 30 full years of imprisonment. And your third
11 option, that the Defendant be sentenced to life
12 imprisonment with parole eligibility, after 25 full
13 years of imprisonment.

14 Now you will have with you two verdict
15 forms. I'll read each of these to you. This is
16 captioned as the other forms. The first reads, "We
17 the Jury, being duly impaneled and sworn or
18 affirmed, do hereby find that the aggravating
19 circumstances, that the Defendant, Nathaniel E.
20 Jackson was found guilty of committing, with
21 reference to the death of Robert S. Fingerhut,
22 outweigh by proof beyond a reasonable doubt, the

1 mitigating factors presented in this case. We
2 therefore find and recommend that the sentence of
3 death be imposed upon the Defendant, Nathaniel E.
4 Jackson." A line to put the date, and again, 12
5 signatures for the Jury.

6 And the second verdict form reads, "We
7 the Jury, being duly impaneled and sworn or
8 affirmed, do hereby find that the State has not
9 proved that the aggravating circumstances that the
10 Defendant, Nathaniel E. Jackson was found guilty of
11 committing in reference to the death of Robert S.
12 Fingerhut, outweigh by proof beyond a reasonable
13 doubt, the mitigating factors presented in this
14 case, or that the Jury is unable to reach a
15 unanimous verdict, recommending the sentence of
16 death. We therefore find and recommend that the
17 following sentence be imposed upon the Defendant,
18 Nathaniel E. Jackson." You have three choices
19 which are listed there, with a blank line to put a
20 check mark on, which indicates whatever your
21 decision is. It should be dated by the foreperson,
22 12 signature lines.

1 As I have stated and as you know by now,
2 this being a criminal case, you must all agree upon
3 the verdict, whatever that verdict might be.

4 When you have reached your verdict in
5 this matter, you will complete the verdict form
6 which corresponds with your decision, signing the
7 respective lines and date it. That should be done
8 in ink, of course.

9 That is your duty to carefully weigh the
10 evidence, decide all disputed questions of fact,
11 apply the instructions of the Court to your
12 findings and render your verdict accordingly. In
13 fulfilling your duty, your efforts must be to
14 arrive at a just verdict. Remember, you must not
15 be influenced in your deliberations by any
16 consideration of bias, sympathy, or prejudice. You
17 should consider all of the evidence, and make your
18 findings with intelligence, and impartiality so
19 that the State of Ohio, and this Defendant will
20 feel that this proceeding was fairly and
21 impartially tried.

22 Once more, if during the course of the

1 last three or weeks, the Court has said or done
2 anything that you consider an indication of the
3 Court's view on the issue of sentencing, you are
4 instructed to disregard that. That would not ever
5 be my intent, that would be most improper.

6 Now the Court is going to place into your
7 possession the Exhibits, which the Court admitted
8 into evidence during the course of both phases of
9 this trial, in fact, they are already back in the
10 Jury room. And the verdict forms, which I have
11 just read to you.

12 The foreperson should retain possession
13 of the Exhibits and the verdict forms, and return
14 the verdict forms into the Courtroom, when you have
15 reached your decision in this matter. I'll at the
16 appropriate time, have Laurie come over and pick
17 that up from you. So, until your verdict is
18 announced in Open Court, you are not to disclose to
19 anyone else the status of your deliberations, or
20 the nature of your verdict. Whenever all 12, and I
21 repeat, all 12 of you agree on your verdict, you
22 will notify the bailiff that you are ready to

1 return to the Courtroom.

2 THE COURT: I don't. You will have with you in the Jury room,
3 as I have said, the Exhibits, the verdict forms and
4 copy of the verdicts of the first phase of the
5 trial and a complete exact copy of the instructions
6 I have just given to you.

7 Ladies and gentlemen, are you ready to
8 begin deliberations?

9 (All nodded affirmatively.)

10 THE COURT: You are still in the
11 care and custody of Laurie Brown and the deputies
12 that were sworn in. So, until you reach a verdict
13 now, you are sequestered.

14 MR. WATKINS: I think it should be
15 in the record that we're satisfied with the
16 instructions.

17 MR. CONSOLDANE: I need to put
18 something on the record.

19 (At Side Bar with reporter present.)

20 MR. CONSOLDANE: I object to the
21 verdict from the first phase as being sent back at
22 this time. It hasn't been done in the past and I

1 don't see why it should be done in this case.

2 THE COURT: I don't know what law
3 applies to that.

4 MR. CONSOLDANE: We have never done
5 it in the past.

6 MR. WATKINS: It was done in
7 Shaffer. I don't think it makes a difference.

8 THE COURT: I'm going to tell the
9 Jury, so is that the only thing?

10 MR. CONSOLDANE: That is all.
11 There's no other objections outside of what I have
12 already made.

13 THE COURT: I'm going to tell the
14 Jury that they will not have the verdict --

15 MR. CONSOLDANE: I don't think you
16 need to say anything. Just don't send them.

17 THE COURT: If they should request
18 it, then we'll address it.

19 (End of Side Bar.)

20 THE COURT: For the record, I made
21 the interlineation crossing out those two words.

22 MR. CONSOLDANE: Thank you.

1 MR. WATKINS: Thank you. Take ten
2 minutes and assemble outside. Do not express
3 anything or form any opinion until you get back
4 there.

5 (Jurors in recess at 11:45 A.M.)

6 (Jurors commenced deliberations at 11:55 A.M.)

7 THE COURT: To the alternates, we
8 have had a meeting at Side Bar, and at this point,
9 it is proper that I discharge you from any further
10 duties. We could not put you into the Jury at this
11 point if something would happen to one of them. We
12 would have to deal with that on its own merits. It
13 is only possible to put you in up to the point
14 where I sent them out just now.

15 I do wish to sincerely thank each of you.
16 You have been very attentive. I can't stress to
17 you how unusual that is. We get this many people,
18 and I have been watching the Jury, whenever I had
19 my eyes open, I have been watching the Jury and I
20 have never seen anybody other than giving full
21 attention to what is going on. It's unusual. You
22 folks have served us well. Thankfully, we did not

1 have to replace any of the jurors because that
2 causes potential other problems, when that does
3 occur, but I can't pay you any more than the County
4 is paying you, but you have done everything and
5 done it well, that we have requested and you have
6 served, I think a very important part of your
7 citizenship by being here. I hope the experience
8 wasn't too unpleasant. I know it took from your
9 personal lives, but it has been most helpful to all
10 of us. I know the State and Mr. Jackson appreciate
11 it.

12 MR. CONSOLDANE: We have had cases
13 where we have gone through all four of the
14 alternates, that we need them to back up. It is
15 like having a bench. We have, especially during
16 flu season, we have lost some people and had to go
17 through all four in the past.

18 THE COURT: Many things can happen
19 even over four weeks in all of our lives. You are
20 under no further obligation in this case. I would
21 instruct you to not discuss with anybody your
22 thoughts on the matter until the Jury has rendered

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1 their verdict. Once the Jury has rendered their
2 verdict, then you are free to do that.

3 (Alternates excused.)
4

5 JURY VERDICT AT 4:30 P.M.

6 THE COURT: Have the Jury come out,
7 please. Please be seated. Ladies and gentlemen of
8 the Jury, have you arrived at a verdict in this
9 matter?

10 JURY: Yes, we have.

11 THE COURT: Would the foreperson
12 please deliver that to the bailiff? Thank you.
13 "State of Ohio versus Nathaniel E. Jackson. We,
14 the Jury, being duly impaneled and sworn or
15 affirmed do hereby find that the aggravated
16 circumstances that the Defendant Nathaniel E.
17 Jackson was found guilty of committing with
18 reference to the death of Robert S. Fingerhut
19 outweigh by proof beyond a reasonable doubt the
20 mitigating factors presented in this case. We
21 therefore find and recommend that the sentence of
22 death be imposed upon Defendant Nathaniel E.

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1 Jackson." That is dated November 15 this 2002, and
2 the verdict had been duly signed by all 12 members.
3 Ladies and gentlemen of the Jury, have I properly
4 read the verdict rendered by you?

5 JURY: Yes.

6 THE COURT: Thank you. Does the
7 State wish to poll the Jury?

8 MR. WATKINS: No, Your Honor.

9 THE COURT: Does the Defense?

10 MR. CONSOLDANE: Yes, Your Honor.

11 THE COURT: Juror No. 1, have I
12 properly read your verdict?

13 A. Yes, you have.

14 THE COURT: Number two?

15 A. Yes, you have.

16 THE COURT: Number three?

17 A. Yes, Your Honor.

18 THE COURT: Number four?

19 A. Yes, Your Honor.

20 THE COURT: Number five?

21 A. Yes, Your Honor.

22 THE COURT: Number six?

1 A. Yes.

2 THE COURT: A Number seven?

3 A. Yes, Your Honor.

4 THE COURT: Eight?

5 A. Yes, Your Honor.

6 THE COURT: Nine?

7 A. Yes, Your Honor.

8 THE COURT: Ten?

9 A. Yes, Your Honor.

10 THE COURT: Eleven?

11 A. Yes, Your Honor.

12 THE COURT: And 12?

13 A. Yes, Your Honor.

14 THE COURT: Thank you, folks.

15 Ladies and gentlemen, this has been a very
16 difficult and time consuming and arduous task for
17 all of you. This is never a pleasant thing to call
18 anybody to do. But it is something that is
19 required if our system is to maintain what we call
20 justice. Most of the people avoid such a duty and
21 you folks I know have had fixed feelings. Many of
22 you have expressed them as we went through the

1 whole process. But without folks like yourself to
2 step up and do this duty we wouldn't have much of a
3 system. The most I can say to you and it is
4 heartfelt is thank you very much. I'm able at this
5 time to release you from any further responsibility
6 in this matter. As I stated to you before, you are
7 at liberty to discuss your experiences as a juror
8 with anyone with whom you wish to talk or you may
9 of course, not wish to speak to anybody and that is
10 your business. But for all of us involved here, I
11 would say thank you very much. You are excused.

12 MR. WATKINS: Your Honor, are you
13 going to let everyone else stay in the room until
14 the Jury leaves?

15 THE COURT: Yes. Please everybody
16 remain here until the Jury has had an opportunity
17 to leave. We'll give you folks time to leave the
18 Courthouse. If you want to go back to your cars
19 and leave, that's fine. If you wish to stay around
20 of course you are welcome to do that. But we'll
21 keep everybody in the Courtroom for probably about
22 five minutes or so. Okay. Thank you so much.

1 Everybody can have a seat.

2 THE BAILIFF: Excuse me, can the
3 alternates go back? They requested they wanted to
4 see the alternates. Can they go back in the Jury
5 room now?

6 THE COURT: Yes, the alternates are
7 welcome to go back.

8 THE BAILIFF: They do not want to
9 talk to the press. They do not want the press to
10 bother them. They said they are going to their
11 cars and they have no comment.

12 THE COURT: Okay.

13 MR. WATKINS: Your Honor, I would
14 request that maybe a deputy go with them.

15 THE COURT: Okay, that will be fine.
16 This matter will be set for the first of the week
17 sometime. I would like to see counsel sometime
18 Monday. And we'll get a date picked then for any
19 sentencing. I, of course, have to review the
20 entire record and that will take some period of
21 time but Mr. Jackson will be held in the meantime
22 at the County jail until the appropriate date for

1 sentencing. The Court is adjourned. Public is
2 able to leave if they wish and you heard the
3 request from the Jury. Thank you all.

4 (COURT IN RECESS)

5

6

7 Tuesday, November 26, 2002: Motion In Limine and

8 Defendant's Motion for Proportionality Review:

9 (In-chambers at 1:30 p.m.)

10 THE COURT: We're in-chambers on a

11 motion in limine at the conclusion of the trial

12 prior to the sentencing date coming up on December

13 9th. I failed to mention all parties are present,

14 the representatives from the Prosecutor's Office

15 and the Defense, including the Defendant,

16 Mr. Jackson. The motion in limine, the Court has

17 previously upon motion of the Defense, granted this

18 hearing which is unusual, I guess, at this

19 juncture, but counsel indicated that they had

20 something that they thought was proper to be argued

21 prior to the Court's determination in the matter.

22 So, I have afforded this opportunity. You have

1 your motion in limine, Mr. Watkins?

2 MR. WATKINS: Yes. The Court has
3 granted Attorney Consoldane the opportunity when
4 the Jury made its decision and recommended the
5 death sentence, that Attorney Consoldane requested
6 to present case law concerning proportionality. I
7 would note that in all of the death penalty cases
8 that I have tried and from the research, that
9 ordinarily the process is for the Court to
10 determine whether or not, the aggravating
11 circumstances outweighed the mitigating factors
12 beyond a reasonable doubt from a reading of the
13 record or review of the case. In this particular
14 case, he has asked to present cases regarding
15 proportionality, which in my opinion is usually and
16 by law, reserved to the Ohio Supreme Court under
17 our present system. And today, he indicated that
18 he wanted to go into a different item, such as
19 prosecutorial misconduct, such as judicial
20 indiscretions concerning the case, concerning final
21 argument, whatever. That is not appropriate at
22 this point. In fact, I don't think we should be

1 even here on proportionality issues, and that he
2 has a right to make a motion for a new trial after
3 sentence. And he can argue whatever, and it has
4 been done in the past, and I expect the motion for
5 new trial to occur. It needs to take place after
6 the sentence, and therefore, I am moving that the
7 Court limit the argument today to what was the
8 understanding, that is, to areas regarding
9 proportionality.

10 THE COURT: Defense?

11 MR. CONSOLDANE: Several things
12 happened throughout the trial which I made
13 objections and are part of the record and would
14 plan to raise either in a new trial or on appeal.
15 However, the incidents that occurred during the
16 final arguments of the sentencing phase was
17 prevented from making an objection. Number one, I
18 couldn't object after you had told the Jury that it
19 was a recommendation that you could lower, but not
20 raise. There was nothing I could say to object.
21 If I had objected to try to cure that, it would
22 just make it worse, and there's no way --

1 THE COURT: Let me interrupt you at
2 this point, Mr. Consoldane. Are you -- in your
3 view, did the Court make an improper instruction as
4 to what the law is?

5 MR. CONSOLDANE: I don't think that
6 the Court said anything that was not correct as far
7 as the law goes, however, there's been several
8 Court cases that have held that when you explain to
9 the Jury that their function is just that of a
10 recommendation --

11 THE COURT: I believe those cases
12 dealt with the Prosecutor trying to tell the Jury.

13 MR. CONSOLDANE: It is maybe
14 typically bad when the Judge does it.

15 THE COURT: The Judge's duty is to
16 instruct on the law.

17 MR. CONSOLDANE: That was not in any
18 written instructions that we reviewed before you
19 talked to the Jury. This was, I have never heard
20 an instruction given like that in any of the death
21 penalty cases that I have tried.

22 THE COURT: The Court of Appeals

1 will have to deal with that part.

2 MR. WATKINS: The Supreme Court.

3 THE COURT: I'm sorry, the Supreme
4 Court.

5 MR. CONSOLDANE: I wanted to call
6 that to the Court's attention, and maybe regarding
7 the recommendation that the Jury did give, that it
8 may be faulty and I thought maybe the Court would
9 like to look into that now, rather than letting
10 the -- take that under consideration rather than
11 letting it go to the Supreme Court to decide
12 whether or not that was a faulty instruction.

13 THE COURT: The Court does not
14 believe it was a faulty instruction.

15 MR. CONSOLDANE: Every instruction
16 that you give the Jury, we get to review ahead of
17 time, and this was not in any of the Jury
18 instructions.

19 THE COURT: You have a right to
20 object to that, but you also are carrying it one
21 step further than that and saying that the Court's
22 instruction was wrong, or was in some way

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1 prejudicial. I gave the instruction. That has
2 already been done. That is for review for a later
3 day for another Court to determine.

4 MR. CONSOLDANE: I imagine then
5 likewise that I'm not allowed to get into any of
6 the things like Mr. Watkins saying he would connive
7 his way out of prison.

8 THE COURT: That's a motion for new
9 trial perhaps.

10 MR. CONSOLDANE: Then I'll reserve
11 those.

12 THE COURT: Today I think anything
13 that you wish to present should be any information
14 you wish to impart to the Court.

15 MR. CONSOLDANE: I can do that very
16 quickly. We don't need to go in as long as you are
17 here.

18 THE COURT: We have the sentencing.
19 Anything you feel is relevant.

20 MR. CONSOLDANE: I think that the
21 Court is well aware that I have had, there was
22 George Foster, who was found guilty --

1 MR. WATKINS: The press is out
2 there.

3 MR. CONSOLDANE: Why should they
4 hear half of it?

5 MR. WATKINS: It should be done in
6 Court on this issue. It shouldn't be done here.
7 That is why this hearing is set up.

8 MR. CONSOLDANE: I object. If we're
9 going to do it, let's do it now.

10 THE COURT: We have gone from the
11 argument on the motion in limine to the question of
12 the purpose of the primary motion filed today. It
13 is a public hearing. Let's go out there. For the
14 record, I'm granting the motion in limine to limit
15 the testimony or anything -- not testimony but
16 anything that is going to be put on before the
17 Court today to the issue of relevancy to
18 sentencing.

19 MR. CONSOLDANE: All right. Just
20 for clarification, I believe that all of these
21 things are relevant to sentencing. They may be
22 arguments for a new trial, and they very well are,

1 but I think that they also are arguments for
2 sentencing. I believe that a lot of these things
3 should be considered, that like I say, Mr. Lewis
4 and I have gone through the transcript of the
5 argument and marked all of the spots in here that
6 have been incorrect and that were unfair to
7 Mr. Jackson, and--

8 THE COURT: Those are all questions
9 of appeal of the record. The only reason for this
10 hearing is the Court has to independently analyze
11 and review the evidence that was presented, and the
12 decision of the Jury made upon that evidence. If
13 there's some instruction or error in the
14 instructions of law given, some prosecutorial
15 misconduct, anything else that dealt with the trial
16 itself, that is a matter of appeal, not for this
17 Court to at this point deal with. Now, that being
18 said, on a motion for new trial, of course this
19 Court has to listen to certain items of that nature
20 to see if in my opinion there was some sort of an
21 abuse of due process, but that again is for a later
22 date.

1 MR. CONSOLDANE: Then Mr. Watkins'
2 remark that the proportionality argument is
3 reserved to the Supreme Court, so am I barred from
4 discussing that, also?

5 THE COURT: That is the purpose I
6 understood, of this hearing.

7 MR. WATKINS: He granted it. The
8 Court has ruled that way.

9 THE COURT: Since you have raised
10 the issue, I'm going to deal with it. I don't want
11 this to be something for the Court above to wonder
12 why didn't the Judge do something, or what would he
13 have done. I'll listen to your argument, and take
14 that into consideration. I don't know as I sit
15 here, I don't know that I have ever seen where a
16 lower Court dealt with the argument of
17 proportionality, but it is something that I fully
18 intend on exploring and seeing if it is proper or
19 if that is something that is to be left again, to
20 the Supreme Court. One can argue that the
21 proportionality should not be county by county.
22 That would lead to a disastrous result, I think.

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1 It should at least be state-wide, but I don't know.

2 I haven't reviewed that idea or looked to see if

3 there's any other cases that deal with it. I hope

4 someone has some cases that might aid me in that

5 regard, but let's hear what your arguments are.

6 (OFF THE RECORD)

7 MR. CONSOLDANE: I have nothing

8 further.

9 THE COURT: Do you want to proceed?

10 You have nothing further by way of your motion

11 today?

12 MR. CONSOLDANE: I have nothing

13 further in here.

14 MR. WATKINS: Judge, I just want the

15 record to reflect that when the transcripts are

16 prepared, Attorney Consoldane represented that he

17 did not object. The record is going to reflect

18 that he did object and he was never curtailed

19 during the mitigation phase from objecting. He

20 represented that he did not object.

21 MR. CONSOLDANE: I'm saying I did

22 not object when the Court instructed the Jury that

1 it was not in there. It probably should have been
2 made, but I felt to make it at that time would call
3 more attention to something that I didn't want to
4 call attention to. I didn't do that.

5 MR. WATKINS: The procedure is to go
6 to the bench afterwards and make an objection. You
7 can argue plain error. I won't disagree with that.

8 (End of in-chamber hearing)

9 In Open Court at 1:45 p.m.

10 THE COURT: Good afternoon. We're
11 here this afternoon on a motion of the Defendant to
12 present matters which they feel should be put
13 before the Court prior to my decision on the review
14 of the sentence in this matter. Is Defendant ready
15 to present your motion?

16 MR. CONSOLDANE: Yes, Your Honor.

17 THE COURT: You may proceed.

18 MR. CONSOLDANE: The other items
19 that I mentioned should be included in any type of
20 argument like this, however, I'll limit myself as
21 the Court has instructed, just to the
22 proportionality. Your Honor, I don't need to go

1 back too many years, but to start out with, there
2 was a Bernie Lee that was convicted of breaking
3 into a lady's home and robbing her, an elderly
4 lady. And he did not get the death penalty. And
5 then after that, we had two other ones that were
6 pretty much the same. We had Scott Burrows and
7 Shaffer. Now both the Burrows and Shaffer case,
8 they were both pre-planned. They both involved a
9 breaking into a home, and they both involved
10 multiple killings, not just a single killing.
11 There were multiple killings. And neither one of
12 those cases was the death penalty invoked in this
13 county. And then also George Foster, which was not
14 a planned killing, but it was the rape of a young
15 girl under the age of 13, and killing her. And he
16 still did not get the death penalty. And it just
17 does not seem fair and proportionate to invoke the
18 death penalty on Mr. Jackson when the rest of these
19 did not receive the death penalty for either. In
20 some cases, equal type of culpability and in some
21 cases involving more destruction of life, more than
22 one person was killed. So I think that this is

1 something that the Court should take into
2 consideration along with reviewing the record,
3 before imposing the death penalty.

4 THE COURT: Thank you. Mr. Watkins?

5 MR. WATKINS: May it please the
6 Court, the law in my opinion will reflect that the
7 question of proportionality is a question that --

8 MR. CONSOLDANE: I'm going to
9 object. If that is the case, we shouldn't be
10 arguing this today. If he's saying that is not
11 proper. You already, already --

12 THE COURT: He has the right to
13 state his position. The Court has to decide
14 whether it is proper or not. The objection is
15 noted.

16 MR. WATKINS: If he would have
17 waited, I simply was going to say that the law of
18 proportionality involves a state-wide application,
19 rather than a local application and I'll address in
20 my opinion the difference between this Defendant
21 and the other cases in Trumbull County. First
22 Bernie Lee, that was mentioned, dealt with one

1 specification. It dealt with a man over 30 some
2 years of age that from all accounts committed the
3 crime impulsively under the influence of drugs. He
4 had no criminal record. The Defendants, Burrows
5 and Shaffer were 19 years old. That is a
6 mitigating factor, the age. In addition, Burrows
7 had a much different history than this Defendant,
8 and every Defendant is to be individualized when
9 one compares death penalty to other cases in
10 application. George Foster had a history of
11 schizophrenia and again committed a crime
12 impulsively. If you would look at in Trumbull
13 County, you had a case involving a man that --
14 Stanley Adams has a similar criminal history as
15 this Defendant, repeatedly in prison, that was
16 brought out in mitigation. You also have a man
17 that is 30 years of age, Stanley Adams was 35. And
18 further, you have other cases in Trumbull County
19 where the death penalty was given in burglaries.
20 Shawn Carter, even though he was 19 years of age.
21 Even though he was adopted, even though there was
22 evidence of abuse, he was sentenced to death. And

1 the Supreme Court of Ohio upheld his sentence and
2 he had a mitigating factor of age. Kenny Biros had
3 no criminal history. He had evidence of alcoholism
4 and abuse in his family, and he committed a crime
5 that the evidence would suggest was committed
6 intentionally and not planned, premeditated. He
7 received the death penalty. In short, you could
8 look at Trumbull County cases and find cases that
9 are proportional to what this Defendant has
10 received by way of recommendation by the Jury. But
11 most importantly, it is our position that what the
12 Court should look at would be the Supreme Court of
13 Ohio, in its cases including State vs. Carter, and
14 I would also mention State vs. Getsy, even though
15 Getsy was 19 years of age, he was involved in a
16 planned, premeditated murder. The attempt was to
17 kill Charles Serafino, but in fact intentionally
18 killed, as this Court is aware, being the trial
19 Judge on the case, killed the mother of
20 Mr. Serafino. He's on death row, even though he
21 had a mitigating factor and he had more evidence of
22 mitigation by way of family background than this

1 Defendant in my opinion. I would note that there
2 are cases I would like to cite and I'll have copies
3 of various cases, State vs. Goff, 82 Oh. St. 3rd,
4 123, 1998. The Ohio Supreme Court had to determine
5 whether or not the aggravating circumstances of
6 aggravated burglary outweighed the mitigating
7 factors by way of review. And in that case, it was
8 brought out that the appellant was 19 years of age
9 which was a statutory mitigating factor, that he
10 had significant drug and alcohol problems, and he
11 was convicted of one aggravating circumstance. The
12 Supreme Court of Ohio said that is sufficient to
13 sustain with one aggravating circumstance, and even
14 though there was drugs and alcohol and even though
15 he was 19 years of age, that that was an
16 appropriate penalty in the State of Ohio, to-wit
17 the death penalty.

18 In State vs. Goff, other cases are cited
19 dealing with one aggravating circumstance, and in
20 my opinion, the major aggravating circumstance in
21 this case is the most overwhelming evidentiary
22 aggravating circumstance that I have ever

1 prosecuted and seen, where this Defendant planned
2 to commit an offense in the home, to-wit an
3 aggravated murder while in prison. In State vs.
4 Bonnell, State vs. Franklin, and State vs.
5 Campbell, 61 Oh. St. 3rd, 179, 62 Oh. St. 3rd, 118,
6 and 69 Oh. St. 3rd 38, two 1991 Ohio Supreme Court
7 cases, and a 1994 Ohio Supreme Court case. Those
8 cases deal with one aggravating circumstance,
9 to-wit again, aggravated burglary. In Franklin,
10 the Defendant broke into the victim's apartment,
11 beat the victim to death with a claw hammer and
12 took money from the victim. Franklin presented to
13 the Jury, evidence that his age was 21, that there
14 was residual doubt, since it was all circumstantial
15 evidence. That he had no serious criminal history,
16 and that he had childhood illnesses that resulted
17 in a poor school performance and did not have a
18 loving or nurturing family, the Ohio Supreme Court
19 upheld the death penalty in spite of those
20 mitigating factors. There are other cases which
21 are numerous and I'll have for the Court. I don't
22 have right at hand --

1 THE COURT: Since you have run those
2 off, I would appreciate seeing them.

3 MR. WATKINS: That have multiple and
4 I believe it is State vs. Holloway, that have
5 multiple aggravated robbery, aggravated burglary or
6 different combinations; but Your Honor, there are a
7 plethora of cases that clearly have individuals
8 currently on death row that had more mitigation
9 than this Defendant, who committed a crime with
10 less evidence being shown in Court. And if
11 anything, with all due respect, the evidence that
12 this Jury had justified their recommendation, and
13 if you compare with other persons on death row, he
14 will have to go in front of them with all due
15 respect. Thank you, Your Honor.

16 THE COURT: You have last word, if
17 you care.

18 MR. CONSOLDANE: Just two things.
19 Jim would like to have last word but I would like
20 to call the Court's attention to a few cases and
21 let Jim talk. These cases that I'm going to be
22 discussing aren't Supreme Court cases. These are

1 Common Pleas cases, in which the Judge overrode the
2 Jury's recommendation. They had State vs. Brian
3 Siler. That is a case out of Ashland County on
4 June 14th of this year. And after that, there was
5 State vs. Timothy Hancock from Warren County, that
6 was in December of 2001. State vs. Christopher
7 Fuller, Butler County, October 18, 2000; State vs.
8 Gregory Crawford, Wayne County, May 24, 1999.
9 State vs. John Parsons, 1988, Franklin County.
10 State vs. Eddie Robertson, 1988-CR-3179, Montgomery
11 County. State vs. Alonzo Wright, Cuyahoga County,
12 and State vs. Drewey Kiser, Ross County. These
13 have all been cases that after reviewing the Jury's
14 recommendation, that the Judge has overturned the
15 death penalty.

16 THE COURT: Are those all reported
17 cases of ones that have gone up or not?

18 MR. CONSOLDANE: Yes.

19 THE COURT: Perhaps you can leave
20 your list with me so I can review those. Anything
21 else?

22 MR. CONSOLDANE: Just Mr. Lewis has

1 something to say.

2 MR. LEWIS: We'll get you copies of
3 those cases. It is interesting in all of the years
4 that I have been defending cases involving death
5 penalty and Mr. Watkins has been the adversary as
6 the Prosecutor, and every case when he gets up in
7 front of the Jury and at the very end he says,
8 "This is the worse death penalty case I have ever
9 seen." He did it in Bernie Lee. He's more than
10 kind, all of a sudden, at this juncture to say,
11 "Well, Bernie Lee, that was just a spontaneous
12 thing, he broke into the lady's house and he
13 stabbed her only 59 times or something."

14 MR. WATKINS: 82 times.

15 MR. LEWIS: The problem becomes at
16 this juncture, that somehow he minimizes that at
17 the time it was a diabolic ploy. He was going to
18 rob the poor woman and he was charged with burglary
19 as a spec. Then you move into the areas of George
20 Foster and I remember being in the Courtroom
21 downstairs, and the same thing applied in that
22 particular case. This was the most heinous crime

1 and the death penalty should apply and the Jury
2 didn't think so. The two cases that are most
3 similar to this, and even the Prosecutor at the
4 time, of course, said they were the most outrageous
5 and heinous crimes are Scott Burrows and
6 Mr. Worley, involving the death of two elderly
7 people. And the Prosecutor got up and in opening
8 statement and closing argument, said this was
9 planned out, these two guys had this whole thing
10 planned out. Took the man out of the house, killed
11 him, put him in the Mahoning River, came back and
12 killed the wife. It was all planned out. He said
13 it was a plan. And he invaded the home, same
14 thing, it was an aggravated robbery. It was
15 aggravated burglary and we have the death of two
16 people. Still ends up with a life sentence. And
17 then we move on to Ron Shaffer. Ron Shaffer with
18 others, went to a house. It was a home in Newton
19 Falls where people are to be safe, went in the
20 home, shot two individuals, killed them, and
21 attempted to murder a third individual. And yet,
22 that was an aggravated robbery. That was an

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1 aggravated burglary, same thing we have here. And
2 yet, life sentence was there. Were these good guys
3 without records? No, they weren't good guys
4 without records. They have all had run-ins with
5 the law and even though Mr. Watkins now is kind of
6 kind to George Foster saying he's schizophrenic.
7 He didn't say that down in that Courtroom. He said
8 George knew exactly what he was doing and all of
9 that mumbo jumbo about being in hospitals. That is
10 not true at all, and this guy knows what he's
11 doing, right from wrong.

12 MR. WATKINS: I'll object. That is
13 not reflective of what happened.

14 THE COURT: This is argument.

15 MR. LEWIS: Here's where I am.
16 Where I am is simply this, and it is pretty
17 understandable. The Prosecutor takes one stance in
18 one area and turns around and says something
19 different here. Whenever you get in the Court, I
20 don't care whether it's a defense lawyer or
21 Mr. Watkins, whatever, you say it, you should live
22 by it. All of the cases I have mentioned, the

1 Getsy -- every one of these cases he's gone and
2 said this is the worst possible crime, and still we
3 have a lot of life sentences in here. So,
4 regardless of what he says and what he pronounces
5 and whatever, the proportionality idea is simply
6 this, is to weigh this particular crime against
7 some of the others, and if life sentences were
8 appropriate in the killing of more than one
9 individual, two, and almost three and a couple of
10 incidences where life sentences were granted. I
11 think there there's a lot to be said for that.
12 Thank you.

13 THE COURT: Thank you. Here's the
14 problem that I have with this Court being called
15 upon, and I don't know what I'm going to do yet. I
16 have to review all of this. I think at a minimum
17 that is required. All of the cases that you cite,
18 Mr. Lewis, are cases in our county where the Jury
19 made the decision. Some cases they have given life
20 imprisonment, some cases they have given death. I
21 think Mr. Watkins has attempted to explain
22 similarities and differences with those, wherein

1 the death penalty was given. I'm not aware of any
2 case in our county yet where a Judge has found it
3 appropriate to set aside a death penalty because
4 they have decided from the evidence and the review
5 that the Jury had sufficient evidence at law to
6 impose the death penalty. In attempting to -- this
7 is the part that concerns me, in attempting to take
8 this small number of cases we have in this county,
9 you have to have some criteria, and the only
10 criteria I could see would be to call upon each
11 individual Judge to apply his individual sense of
12 fairness. Every Judge is different. Every Judge
13 has his own opinion on things. Nothing wrong with
14 that. If you carry that to its logical extreme,
15 then you are going to have a situation where you
16 are not going to want to have a case tried before
17 this Judge because he believes in the death
18 penalty. This other Judge, I don't think believes
19 in the death penalty, so that is the Judge we want.
20 Our system is supposed to be more consistent than
21 that. It is a fact that the legislature of Ohio
22 which is the voice of the people, many people feel

1 it is 20 years behind present sentiment, but be
2 that what it is, that's the way our Government is
3 set up. The will of people is expressed through
4 the laws passed by the legislature. The law of
5 Ohio, is that if evidence beyond a reasonable doubt
6 proves that the aggravating circumstances outweigh
7 any mitigating factors, then the Jury is called
8 upon to make a decision as to whether or not they
9 feel the imposition of a death penalty or life
10 imprisonment is proper. I do not disagree that
11 proportionality should be something that is taken
12 into account on a review. Because it is quite
13 possible that some areas of the State might be
14 applying the standard that we all read in the law
15 in a different manner, than what another portion of
16 the State, that would be unfair. The question I
17 have to decide based on this motion is whether or
18 not there's a legitimate criteria that I should
19 apply based on our county's history alone. I have
20 no practical way to search the entire record of the
21 State, but I wonder if that is my function. As I
22 said, I have allowed this argument to be made

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1 because legitimately it may be something that the
murder 2 upper Court will feel is proper at this level. I
3 don't know. But it just is very apparent that it
4 would be a real shot in the dark because of the
5 lack of information to make an informed decision.
6 But I would ask each of you to give me those cases.
7 I wish to read those over and see if there's some
8 indication that I am overlooking something.
9 Anything else before this Court?

10 MR. WATKINS: No, Your Honor.

11 MR. CONSOLDANE: No, Your Honor.

12 THE COURT: I thank you all.

13 (Court in recess at 2:10 p.m.)

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15

16 Monday, December 9, 2002:

17 (In Open Court at 10:15 A.M.):

18 SENTENCING HEARING:

19

20

21

22

THE COURT: We're here today for the
sentencing in the case of State of Ohio vs.
Nathaniel E. Jackson. Would the Defendant please
come forward with counsel?

1 Mr. Jackson, you have been found guilty
2 of aggravated murder with specifications by a Jury
3 of your peers. Is there anything that you or your
4 counsel wish to place on the record prior to
5 sentencing?

6 THE DEFENDANT: I'd just like for
7 the Court to spare me my life. I'm sorry for what
8 happened, happened. I never meant for it to
9 happen.

10 THE COURT: Counsel, do you have
11 anything you wish to place on the record?

12 MR. CONSOLDANE: Not at this time.
13 We do have a motion to make at the conclusion.

14 THE COURT: I have prepared and
15 signed a finding of fact and conclusion of law
16 regarding the imposition of the death sentence.
17 I'm not going to read through this, I think it
18 speaks for itself. I'm going to refer only to one
19 section of it.

20 Under the facts of the instant case, the
21 Court cannot foresee of any other form of
22 Aggravated Burglary where the weight to be given to

1 this aggravating circumstance could ever be
2 greater. The evidence presented in this case
3 reveals that the sole purpose for the Defendant's
4 illegal entry into the Fingerhut residence was not
5 to commit a theft, a kidnapping or even a rape, but
6 to rather carry out the premeditated, cold blooded
7 execution of Robert S. Fingerhut. This is the most
8 heinous form of Aggravated Burglary, and it is
9 entitled to unsurpassed weight. Further in this
10 Court's view, this aggravating circumstance,
11 standing alone, outweighs all of the evidence
12 presented in mitigation.

13 And in conclusion, I have entered in this
14 record, upon consideration of the relevant evidence
15 raised at trial, relevant testimony, and the other
16 evidence, the unsworn statement of the Defendant,
17 and the arguments of counsel, it is the judgment of
18 this Court that the aggravating circumstances,
19 outweighed, by proof beyond a reasonable doubt, the
20 collective mitigating factors.

21 Throughout the history of mankind, there
22 have been and continue to be numerous reasons,

1 leading to murder. Murder is often committed out
2 of fear, passion, anger, or due to some misguided
3 religious or political belief. All such killing is
4 condemned, but killings based on those factors have
5 an emotional basis, no matter how irrational it may
6 be. But to take the life of another human being,
7 however, for personal gain or profit, is an act
8 done rationally, without emotion, without any
9 consideration of a fellow human being's life, and
10 that life was treated with little concern, or as it
11 had little worth. Now Robert Fingerhut had the
12 absolute right to not have his life taken. And
13 this Jury has determined you were responsible for
14 that unlawful taking of life. Your actions have
15 affected for all time the lives of the persons who
16 loved Mr. Fingerhut, and sadly, you have also
17 affected those persons who love and have depended
18 upon you.

19 Is there anything further that counsel
20 has to put on the record?

21 MR. CONSOLDANE: No. I think we
22 would just reiterate what we said at the last

1 hearing.

2 THE COURT: I have not asked, is
3 there anything that the State wishes to place on
4 the record?

5 MR. WATKINS: No, Your Honor.

6 THE COURT: Thank you. It is the
7 sentence of this Court that Nathaniel E. Jackson,
8 will be taken from the Trumbull County Jail and
9 delivered to the Lorain Correctional Facility on
10 count three to serve a period of ten years, with
11 the mandatory three-year gun specification charge
12 to be served consecutive with and prior to that ten
13 year sentence. That is on the Aggravated Burglary.

14 On the Aggravated Robbery, the Defendant
15 will serve a period of ten years with a three-year
16 gun specification, which will merge with the prior
17 specification to be served prior to and consecutive
18 to the ten year sentence on the robbery charge,
19 Aggravated Robbery.

20 Now this Court has considered the factors
21 under Ohio Revised Code Section 2929.14 and makes
22 the following further findings.

1 Number 1: The shortest prison term would
2 demean the seriousness of the Defendant's conduct.

3 Number 2: The longest prison term is
4 appropriate because the Defendant committed the
5 worse form of the offense.

6 Number 3: Multiple prison terms are
7 necessary to protect the public from future crime
8 and to punish the offender.

9 Number 4: Consecutive prison sentences
10 are not disproportionate to the seriousness of the
11 Defendant's conduct and the danger the offender
12 poses to the public.

13 Number 5: The harm caused by the
14 multiple offenses was so great that no single
15 prison term for any of the offenses committed is
16 part of a single course of conduct, adequately
17 reflects the seriousness of the Defendant's
18 conduct.

19 Number 6: The Defendant's history of
20 criminal conduct demonstrates that consecutive
21 sentences are necessary to protect the public from
22 future crime by the Defendant.

1 And on Count 1, it is therefore Ordered,
2 Adjudged and Decreed that the Defendant, Nathaniel
3 E. Jackson, be taken from the Courtroom to the
4 Trumbull County Jail and from thence to the
5 Correctional Reception Center in Lorain, Ohio, and
6 therefore, be sentenced to death on December 10,
7 2003. And that he pay court costs. I'll prepare
8 the warrant to convey prisoner for execution of the
9 death penalty.

10 Now Mr. Jackson, pursuant to Criminal
11 Rule 32, I have to advise you of your right of
12 appeal. You have an automatic right to have this
13 case appealed and because it is a death penalty
14 case, it will be appealed directly to the Ohio
15 Supreme Court. If you are still unable to pay the
16 cost of the appeal, you have the right to appeal
17 without payment, and if you are unable to obtain
18 counsel for that appeal, this Court will appoint
19 counsel, without cost. If you are unable to pay
20 the cost of documents necessary for the appeal, the
21 documents will be provided to you, without cost.
22 You have the right to have a notice of appeal

1 timely filed, on your behalf, and that you have the
2 right to have counsel appointed.

3 I'll ask counsel at this time, there has
4 been no change in the status of your client's
5 indigency?

6 MR. CONSOLDANE: No, he's still
7 indigent, and we would request that he be appointed
8 counsel. I think we cannot do that. There is a
9 conflict.

10 THE COURT: I have had some
11 conversation with counsel this morning. Most of
12 our local counsel that are able to handle such
13 appeals, are tied up on other cases, one case in
14 particular which will conflict with their ability
15 to handle this. I think I'm going to have to
16 contact some of the attorneys in Columbus to see if
17 we can find someone to handle this appeal. That
18 will be more workable as the appeal will go through
19 the Supreme Court in any event. I would ask you to
20 please file a formal motion, if you will. I'll see
21 that counsel is appointed within that time period.
22 Is there anything else?

1 MR. CONSOLDANE: Yes.

2 THE COURT: Just one minute.

3 MR. WATKINS: For the record, I
4 would request that defense counsel at least file a
5 notice of appeal, until this is done.

6 THE COURT: The Court has a duty to
7 do that, and I'm asking if you will file your
8 notice of appeal, that will be something on the
9 record. I'll see that counsel is obtained for that
10 appeal. Anything else, Mr. Watkins?

11 MR. WATKINS: No.

12 THE COURT: Mr. Consoldane.

13 MR. CONSOLDANE: Yes, at this time,
14 we would like to make a motion for a new trial, and
15 in making this motion, I would like to restate as
16 fully incorporated at this time, all of the
17 objections and motions for mistrial that I made
18 throughout the trial, and be incorporated also in
19 this motion today.

20 But there are several points that
21 happened during the mitigation hearing, that some
22 were objected to and some were not, that would be

1 grounds for a mistrial. There were several items
2 that I felt was Prosecutorial misconduct, is that
3 the number one was when Mr. Watkins mentioned to
4 the Jury about mental disease. This was not a
5 statutory element that we raised and it is clear
6 he's not allowed to raise, to tell the Jury, well,
7 he did not prove this particular statutory item
8 that would have been a mitigation factor, to say
9 that well, we didn't prove this or didn't prove
10 that, they can only comment on what we did put
11 forward to the Jury.

12 Also, he mentioned in his closing
13 argument, that Mr. Jackson was a cold blooded
14 psychopathic killer. The mitigation hearing is
15 supposed to go to the facts of the aggravated
16 circumstances, not the murder itself, and I think
17 that was improper.

18 Also he mentioned the mental illness, the
19 background doesn't mean much. That was an unfair
20 comment on his part and also, when he mentioned,
21 when he talked about the unsworn statement. That
22 was also in the final argument, and was not dealing

1 with it fairly. He's allowed to give an unsworn
2 statement and it is not subject to cross
3 examination, and for Mr. Watkins to try and cross
4 examine him with the Jury, was unfair.

5 Also, when Mr. Watkins mentioned to the
6 Jury that he's been able to manipulate the system
7 before and that he could get out of jail early, and
8 I asked the Court to instruct the Jury that it was
9 a life, that life without parole meant that there
10 was no way he can manipulate himself out of jail
11 early. That was an unfair comment to leave the
12 Jury with. I had nothing to say after that. That
13 was in Mr. Watkins closing argument.

14 And also, he was discussing about the
15 murder again, that it being planned and there is
16 lingering doubt, no residual doubt. These were
17 unfair comments that the Prosecutor made.

18 Probably the number one reason, that I
19 think we should have a mistrial, it was
20 unfortunate, it was something that the Court had
21 mentioned to the Jury, and when you said the Court
22 can only reduce the penalty and has no power to

1 increase it. That left the Jury with the only out
2 that we would have to give the death penalty, and
3 let the Court decide on whether it was proper or
4 not. It left them with the feeling if they came
5 back with a life sentence and death would have been
6 appropriate, that you as much as told them, that
7 you had no power to increase it, and I think that
8 that was an instruction to the Jury, that we didn't
9 get a chance to review ahead of time. And we
10 usually, even though the Prosecutor draws up a lot
11 of instructions for the Court, at least, we have
12 the advantage of looking those over, and making our
13 arguments, before we come out into the Courtroom.
14 And this particular instance, it was not included
15 in the instructions to the Jury and it really
16 worked as a bias to Mr. Jackson.

17 THE COURT: Are you saying that was
18 an improper statement of law?

19 MR. CONSOLDANE: No, Your Honor, I'm
20 not saying that anything you said was untrue. What
21 you said was a correct statement of the law. I
22 just don't think that that particular statement

1 should have been told to the Jury. I think there's
2 been cases where that is not a proper thing for the
3 Jury to be told and moreover, is that if you were
4 going to tell the Jury that at least we should have
5 had a chance to argue this in-chambers before we
6 came out, rather than being blind sided by it.

7 THE COURT: Are you going to file a
8 formal written motion?

9 MR. CONSOLDANE: This is my motion
10 for new trial.

11 THE COURT: I'll take that under
12 advisement and issue an opinion. Anything further?

13 MR. WATKINS: Yes. I think that
14 this ordinarily is not done this way, and that
15 Attorney Consoldane should be required to file a
16 memorandum in support of his motion for new trial,
17 which we can respond to.

18 MR. CONSOLDANE: I have made my
19 motion. They can respond to it.

20 THE COURT: The motion is usually to
21 be fortified with case law, but if that is all you
22 wish to present, then that is fine. That concludes

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1 the sentencing in this matter. Thank you.

2 (End of Hearing at 10:30 A.M.)

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4 (END OF PROCEEDINGS)

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6

7 and counsel represented by

8 the within hearing is shown

9 on by a 12 page document

10 of the hearing

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C E R T I F I C A T E

I do hereby certify that the above
and foregoing is a true and correct transcript of
the proceedings had in the within hearing as shown
by stenotype notes written by me in the presence of
the witnesses at the time of the hearing.

Mary Ann Mills

MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio